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Catholic Church and Christian State.

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Catholic Church and Christian State.

A SERIES OF ESSAYS

ON THE

RELATION OF THE CHURCH TO THE CIVIL POWER.

TRANSLATED, WITH THE PERMISSION OF THE AUTHOR, FROM THE GERMAN

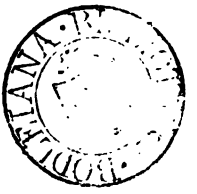
OF

DR. JOSEPH HERGENRÖTHER,

PROFESSOR OF CANON LAW AND CHURCH HISTORY AT THE UNIVERSITY OF WÜRZBURG.

IN TWO VOLUMES.

VOL. I.



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THE

Catholic Church and the Christian State.

INTRODUCTION.

I.

No apology is needed for offering to the public a translation of a work by so eminent an author as Dr. Hergenröther, and on a subject so much discussed as the relations of Church and State. The Author is already known in England by his *Anti-Janus*, which has been translated by Professor Robertson; and in Germany he is recognised as one of the most learned and zealous among the defenders of the Church. As such, he is singled out for especial attack by the champions of the Döllingerite heresy, and is mockingly called 'the official refuting theologian of the Vatican.' But as the English public is fortunately unacquainted with these attacks, it is needless to give that portion of the introduction to his essays in which Dr. Hergenröther repels the charges brought against himself and his fellow-labourers, and exposes the rude insolence of his opponents: showing their literary failings and contradictions, which contrast with their arrogant claim to a monopoly of historical and theological learning. It is enough to say that this work, while answering the criticisms on *Anti-Janus*, is far more than a mere answer. The author's intention has been not to rest on the surface, but to give so thorough and deep an account of the relations of Church and State, as to serve for more than the purposes of ephemeral controversy, and to be a work of permanent value and reference.

It is thus especially suited to the present needs of the Catholics of England, who, amid the controversies as to Church and State, which have grown to such proportions since Mr. Gladstone's too-famous Expostulation, require something more than pamphlets, however excellent, and answers, however conclusive, to particular accusations. A more complete and solid discussion of these subjects is needed, which may serve as an armoury from which to draw weapons against any particular attack, and as a bulwark behind which weaker brethren may securely take their stand: a book, in short, which we may place in the hands of our non-Catholic countrymen, and, until it is read and answered, decline to enter on further controversy. That the present work may satisfy this need is the hope of the Translator; and in view to this end, while translating the text of the second and popular German edition, he has preserved most of the notes of the first edition, which was intended rather for the learned than for ordinary readers. These notes form an invaluable body of references; and the Translator, by combining them with the text of the second edition, hopes to give to the studious few the full advantages of the original edition, and at the same time to give to the general public a text they can easily understand. On the same principle, he has occasionally given in the text an explanatory paraphrase in the place of a literal translation, and has occasionally omitted allusions to modern German writers, newspapers, and political events, which are unfamiliar and uninteresting to English readers, and would often require lengthy explanation. The only considerable passage omitted is a digression on the 'Placet' in Bavaria, which, while of importance to Dr. Hergenröther's fellow-countrymen, especially those of the legal profession, is not of importance to us, for whom the general account of the *placet* is quite sufficient. As to the order of the essays, which is different in the two editions, that of the second has been followed, except in placing the fourth and fifth before the first, second, and third.

The Translator must here advert to a possible misunderstanding as to the words 'Liberal' and 'Liberalism,' which often occur in this work, and always with a bad sense attached to them. He

begs the reader to remember that there is a difference between the English and continental sense in which these words are generally used. In Austria, Belgium, Germany, Italy, and elsewhere, 'Liberal' necessarily implies anti-Catholic: the party called National-Liberal in Germany is the relentless persecutor of the Church; nor is any broad distinction made between religious and political liberalism: whereas in England 'Liberal' has often a sense in no wise anti-Catholic or anti-Christian, and may denote merely giving support to a political party which (at any rate till quite recent times) has shown the most regard to the rights of Catholics. In the present work the word is used in the continental sense; and the Translator has less scruple in so employing it, because it has been used in a closely corresponding sense by Dr. Newman in the *History of my Religious Opinions.** On the same principle, the word 'Conservative' is used always in a good sense, as opposed to 'revolutionary.'

II.

The Translator has now to give, in a concise and continuous form, certain portions of Dr. Hergenröther's introduction, which are scattered amid his criticisms of his literary opponents, and which are as interesting and profitable to English as to German readers, inasmuch as describing certain common failings and false positions fatal to true historical impartiality.

First, it is a grave error to overlook the changes that have occurred since the Middle Ages, and to compare the mediæval Papacy, not, as would be just, with the mediæval States, but with an ideal and abstract State framed according to modern political notions. The Church, indeed, though changing much in her discipline, has changed nothing in those principles of action which are the result of her dogmas. But nations and kingdoms have undergone the greatest transformations; and even the notion of the State has become different,† as any one would

* See especially the note [A] on Liberalism.

† See Walter, Naturrecht und Politik, § 44, Bonn, 2d edit. 1871. Aegidi hardly admits States to have existed in the Middle Ages, but only provinces of the Holy Roman Empire (Erlanger, Theol. Zeitsch., new series, vol. xxxvi. p. 143).

see who compared a modern compendium of constitutional law with analogous works in the juridical literature of former centuries. Gross is the inconsistency of those who still claim for the State various privileges in religious matters formerly conceded to it by the Church, and at the same time proclaim the separation of the two powers—who rest with one foot on the ground of the ancient Catholic State, and with the other on that of the modern State that has no religion—who to-day write on their banners absolute civil and religious liberty, and to-morrow write the omnipotence of the abstract State. Let us ever remember that each age gives its own special character to States, and that those of the present age are no exceptions, but have a special character, which in its own turn will pass away.

A second failing is to forget that 'there is nothing in the world which cannot be brought into discredit' (we are quoting from Balmez)* 'by showing only one side of it; for thus considered, all things are false, or rather are not themselves. All bodies have three dimensions: only to look at one is not to form an idea of the body itself, but of a quantity very different from it. Take any institution, the most just and useful that can be imagined, and look at it simply from the point of view of the evils and disadvantages that it has caused, taking care to bring together into a few pages what in reality was spread over a great many ages, its history will appear repulsive, odious, and execrable. If a partisan of democracy describe in narrow compass, and by means of historical facts, all the disadvantages and evils of monarchy—the vices and crimes of kings—in what light will monarchy appear? If, in his turn, a partisan of monarchy describe democracy and demagogues by the same method of historical facts, how will democracy appear? By assembling in one picture all the evils occasioned to nations by a high development of the social state, we can make civilisation and refinement appear detestable. By selecting certain features from the annals of the human mind the history of science can be made the history of folly, and even of crime. By heaping together the fatal accidents which have

* Protestanismo y Catolicismo, vol. iii. p. 252 (2d edit.); English translation, p. 170 (3d edit.).

been occasioned by the masters of the healing art, their beneficent profession may be represented as a career of homicide. In a word, everything may be falsified by proceeding in this way. God Himself would appear to us a monster of cruelty and tyranny, if, putting aside His goodness, wisdom, and justice, we only looked at the evils in a world created by His power, and governed by His providence.' This was precisely the method adopted in the book the *Pope and the Council*, by Janus.

A third error is to suppose that those who defend the cause of the Holy See are pledged to justify all actions of the Popes.* Far from this being the case, most zealous defenders of the Holy See have shown that their zeal is no hindrance to boldly speaking out the plain historical truth. It has been long ago observed† that Cardinal Baronius, ever a foremost champion of the Holy See, not only collected with conscientious exactitude all the evil reports about the Popes (especially of the tenth century) which he found in historical sources, but also was much too credulous in this matter, and in some cases held up Popes to censure where he ought rather to have unsheathed the sword of criticism against historical calumnies. And the *Civiltà Cattolica*, against which so many invectives are cast, in its notice of Von Reumont's *History of the City of Rome*,‡ praises the author because, with the freedom of a Baronius or Pallavicino, he does not conceal the ill deeds of Popes, cardinals, and prelates, and preserves the mean between the exaggerations on the one side of ill-judged flattery, and on the other of venomous calumny. 'The latter, which infects the writings of so many Rationalists and Protestants at home and abroad, robs history of all credibility, degrading it into a libel; but not less injurious to history is that flattery which changes it into a panegyric, and professes to justify every action of the

* Hefele, Beiträge zur Kirchengeschichte, 1864, vol. i.; apud Möhler-Gams, Kirchengeschichte, vol. ii. p. 188.

† Civiltà Cattolica, 1871, ser. viii. vol. ii. pp. 174, 175.

‡ The statement of Bossuet (Defensio Declar. Cleri Gallic. P. i. l. iii. c. i. p. 273, ed. Mog. 1788), that not all deeds of the Popes are justifiable, is disputed by no Ultramontane theologian. See Bianchi, Della Potestà e Polizia della Chiesa, Roma, 1745, t. i. l. i. § 21, n. 1, pp. 183, 184.

Popes. This seems not to be understood by certain pious and zealous but unwise authors, who maintain certain views in the teeth of incontestable facts, and do not see that not merely their labour is in vain, but also that, being unable long to escape the censure or the ridicule of criticism, they must end by having to confess that they have injured rather than advanced their cause. Reumont is not one of these. He relates and blames in Alexander VI. as in Urban VI., in Leo X. as in Paul IV., in Clement VII. as in Urban VIII., their defects or excesses, their too great severity or too great leniency; while at the same time he shows all the good qualities with which they adorned the chair of St. Peter. He censures the abuses of Papal nepotism, whereby it became full of danger to the Church and the State; but, on the other hand, he is fully mindful of the advantages which it often brought, of the distinguished qualities of many of the Papal nephews, and the services which, as cardinals, they rendered to Church and State. He relates and laments the wanton and frivolous life of many prelates and cardinals, especially in certain unhappy periods, to the dishonour of their lofty and sacred office; but at the same time he places in all its beauty before the eyes of the reader the picture of the virtues and talents, of the meritorious and magnificent works, by which the Sacred College and the Roman prelacy has in every age been distinguished, and has shown itself as the noblest and most glorious senate the world has ever seen.'

A fourth misconception is to suppose that 'Ultramontanes' wish to bring back the Middle Ages. 'When I combated the crude and reckless assertions of "Janus," and defended to the best of my ability and with full sincerity institutions and individuals of the Middle Ages, I never said that all should be now again as it was then, and that all forms of that development should be retained or reintroduced. Nor had I any intention of rejecting modern civilisation altogether, though I could not conceal from myself that it contains elements of very doubtful value, and is very far from being purified from its dross; that goods of a lower order receive at the present day undue attention at the cost of goods of a far higher order; and that many resem-

blances are to be seen to that condition of ancient Greece and Rome, where, as life grew more refined, morals grew more corrupt. Our civilisation, which sprang from Christianity, has become in many ways estranged from its origin, and has gone back instead of going forward.* It must develop, we are told, independently of and in spite of, not the Papacy only, but Christianity in general. Already many Jews, in heart alienated from their religion, boast to take the lead in modern civilisation. Already much is cast aside as mediæval rubbish which formerly was revered by all Christian denominations. The spirit of the Encyclopædists is as powerful as it was a hundred years ago, and is far more widely spread. And yet no proof is brought that that great power, whether the Christian religion in general, or the venerable chair of the Prince of the Apostles, must have irrecoverably lost its civilising and ennobling force. Without the Papacy a fearful deficiency would arise for States, as well as for all cultivation and all law; disorganisation in religious, social, and political life would gain the upper hand; anarchy and the right of the stronger would everywhere triumph; and in the Church there would only be the alternative between Byzantine or Russian servitude on the one side, and the anarchy of unbridled private judgment on the other.'

Lastly, there should be noticed an error, or rather a calumny, which primarily indeed concerns the Catholics of Germany, but which to a certain extent concerns those of England also, especially since the recent charge of disloyalty brought against them. 'The chief effort of all the enemies of the Church is in these days to depict her as dangerous to the civil power, and under this pretext as far as possible to enslave her. This attempt is not new. The reproach of being dangerous to the State was cast against even the first Christians, and has been repeated a thousand times against the Holy See. But as the present time gives such slender support to such an accusation, the past is brought in to the rescue, and a search is made in the history of the Popes, in their letters and publications, for proofs that they

* Hettinger, Apologie des Christenthums, 3d edit. vol. ii. part 3, xix. and xx.

strove for the subjection or annihilation of the civil power in every country. In this search the distinction of different spheres is hopelessly confused. If the Holy See is not ready to condemn as usurpations various acts of former Popes, which are denounced as such, he is unblushingly accused of intending to repeat these acts himself. If the ecclesiastical authority, to be better able to meet the storms of a revolutionary age, is strengthened in its centre, this at once is held to weaken the civil authority. The admonitions of the Church are spoken of as declarations of war. Encouragement and protection is given to revolt against her, under the pretext—the common pretext of all heretics—that her doctrine and constitution have been changed. Since the ghosts of the Middle Ages, especially "Hildebrandism," have been conjured up, the fear of the "Papal-Jesuit conspiracy" has so increased that the whole array of coercive measures, penal laws, courts and officers of justice, the police and the military force, have been held insufficient to meet it. And all these measures have been taken against a despised "sect," against a society whose head has been robbed of his possessions and of all external power, and who is surrounded by a thousand troubles. True, indeed, this much-troubled head is the lawful successor of Gregory VII. and Innocent III., as well as of the great Leo and of Cephas the Galilean fisherman. True, indeed, in spite of his foes, he possesses in the eyes of millions a dignity and majesty with which the splendour of no earthly throne can compare. True, indeed, moral power is often stronger than physical. But is, then, our enlightened age to fear this moral power? Is not its "science" stronger than this "decrepit" authority? Can this authority have strength to fight when its doctrines are outlawed by "science," and when the demand is made (as a deputy in the German parliament demanded) that in schools and universities "things" no longer shall be taught "which are in glaring contradiction with science"? Well may we say that the question: What is science? is like that other question: What is truth? and that more than one Pilate is to be found, who after asking this question turns away without awaiting an answer (John xviii. 38).'

III.

Finally, as to the structure and spirit of the following essays, Dr. Hergenröther speaks as follows: 'Instead of a strictly methodical exposition, which would have deterred many readers, and which would have made it impossible to answer fitly the unmethodical works of my opponents, I have preferred the form of separate essays, which are in close connection with each other, and which allow me to treat the chief subjects from various points of view. In this I have had before me the "Polycraticus" of the learned John of Salisbury, who treated the most interesting questions of his time with constant reference to Scripture, the Fathers, and classical authors, and who on every occasion declared his fidelity to the Church. "What," he wrote,* "is more dangerous or more detestable than civil war? Surely nothing except the rage of schismatics and the pestilence of heretics. It is hard to say which is worst of these two—heresy or schism; if, indeed, they are not rather to be considered as one. When Catholics are assailed by a heretic or schismatic it is a filial duty to support the truth and to serve the Popes devotedly; nor to delay when the schism is evident, since schismatics often pretend to be Catholics. For who shall presume to judge the highest bishop, whose cause belongs to God's tribunal alone? And in fact, whoever is guilty of this presumption, strive how he may, will never gain success." Truly we may say of the schismatics of our time what St. Irenaeus says of those of his time,† that they strain out a gnat and swallow a camel, and that they can effect no reform which is not outbalanced by the evil of their schism. Into further controversies

* Polycrat. l. viii. c. xxiii. (Migne, PP. lat. t. cxcix. p. 814).

† S. Irenaeus, Adv. Haer. l. iv. c. xxxiii. n. 7: 'Judicabit (spiritualis homo) et eos, qui schismata operantur, qui sunt inanes, non habentes Dei dilectionem suamque utilitatem potius considerantes, quam unitatem Ecclesiae, et propter modicas et quaslibet causas magnum et gloriosum corpus Christi conscindunt et dividunt, et quantum in ipsis est interficiunt, pacem loquentes et bellum operantes, vere liquantes culicem et camelum transglutientes. Nulla enim ab eis tanta potest fieri correctio, quanta est schismatis pernicies.'

I have no intention of entering; but I am fully ready to retract or amend whatever, by the judgment of the Holy See or on adequate scientific grounds, may be shown in this work to be incorrect. All for the truth, nothing against the truth; all for the Church of God and in union with her—this is my motto.'

ESSAY I.

THE HOLY SEE AND CIVIL ALLEGIANCE.

MANY writers and some statesmen have expressed their lively apprehension lest the Church, whenever opportunity arose, should renew those encroachments on the authority of the State which they say occurred in the Middle Ages; and they consider this danger has been increased by the definition of Papal Infallibility. We might well lay aside the historical question of 'mediæval Church encroachments,' and ask the reason for this apprehension, when simultaneously we hear it said that the mediæval notion of the supremacy of the Church has vanished for ever, that the sun of ecclesiastical power is fast setting, that the State has at its disposal greater intellectual forces than the Church, and that the political consciousness of the State is more efficacious than the 'religious emotions' of the Church in preserving manly energy and mental freedom. But in fact neither the teaching of theologians nor the declarations of the Popes afford any just grounds for the aforesaid apprehension, but much rather make plain its groundlessness.

PART I. THE TEACHING OF THEOLOGIANS.

§ 1. This presupposes the union of Church and State. § 2. Recognises for both the right of self-defence. § 3. Does not deny the independence of the State; and § 4. its freedom in its own sphere. § 5. In which, however, it is in many ways morally bound. § 6. The power of the State is not without limits. § 7. The power of the Church also has limits. § 8. The State has nothing to fear from the Church, but *vice versâ*, since the Reformation. § 9. The Church especially threatened from two quarters. § 10. Hindrances to the carrying out of the Church's principles.

§ 1.

The teaching of the theologians of the Middle Ages rested upon the supposition, justified then by facts and considered as a

matter of course, that the temporal and spiritual authority would live under one roof, constituting an undivided Christendom, and that both would be equally guided and governed by Christian principles.[1] Whoever will look at the matter from the mediæval point of view will perceive, as several eminent men of modern times—for example, Leibnitz and Mendelssohn—have done, that the widely-spread doctrine of the indirect power of the Church over temporal concerns is throughout consistent, and for those times an obvious conclusion.[2] We should not forget, as Phillips well says, that the commonwealth here spoken of does not include all States without distinction, but only the mediæval Christian State; that if we presuppose the separation of Church and State, many things will appear in quite a different light; and also that the Christian State of those ages cannot in all respects be taken as the rule and model for our own time.[3]

[1] Bossuet, Def. P. i. l. i. c. ii. p. 87: 'Haec autem valere volunt (adversae partis Theologiae), *quando utraque potestas*, civilis et spiritualis, *pars est ejusdem reipublicae Christianae;* tunc enim spiritualem potestatem praeesse civili ut spiritum carni.' Cf. Bellarm. de Rom. Pont. v. c. vii. n. 2: 'Reges et pontifices, clerici et laici, non faciunt duas republicas, sed unam, i.e. unam Ecclesiam. Sumus enim omnes unum corpus (Rom. xii. 5; 1 Cor. xii. 12 seq.); at in omni corpore membra sunt connexa et dependentia unum ab alio. Non autem recte asseritur, spiritualia pendere a temporalibus; ergo temporalia a spiritualibus pendent,' &c. See also Bianchi, t. iii. l. i. c. i. § 6, n. 1, pp. 47, 48. Molina, tract. ii. de Just et Jure, disp. 29, n. 24.

[2] See the quotations in Beidtel, Das Canonische Recht, Regensburg, 1849, pp. 339, 341 seq. Besides the passages there given from Leibnitz (Pensées, vol. ii. pp. 406, 407), we should notice a letter to Pelisson, of March 18 (28), 1692. Here Leibnitz says: 'Quant au pouvoir de l'Eglise ou du Concile oecuménique sur les matières temporelles, *je crois qu'il le faut reconnaître à l'égard d'une influence indirecte*, que les matières temporelles peuvent avoir sur le salut des âmes. L'Eglise doit regler le cas de conscience encore a l'égard de l'obéissance due ou non aux souverains. J'excepte seulement le pouvoir de rebeller ou la voye de fait, que l'Eglise ne peut et ne doit point autoriser. Elle peut faire défense aux sujets d'obéir aux magistrats en certains cas, et ils sont obligés alors d'obéir plutôt à l'Eglise universelle qu'à leur souverain. Mais lorsque les souverains les maltraitent pour cela, ils ne doivent point être rebelles' (Foucher de Careil, Oeuvres de Leibniz: Paris, 1859, vol. i. p. 264). Cf. also Leibnitz's Réponse au Mémoire de l'Abbé Pirot touchant l'Autorité du Concile de Trente (ibid. pp. 405-407).

[3] Phillips, Kirchenrecht, vol. iii. § 126, p. 188 seq.

§ 2.

Even under the supposition of the union of Church and State it has been admitted by theologians,[1] some of whom lived in Rome, and wrote under the supervision of the authorities there,[2] that it would be allowable for civil princes to oppose the Pope in certain cases; for example, if he were to put forth unjust laws relating to discipline, or were forcibly to seize the possessions of others.[1] The mutual independence of Pope and princes is thus preserved. When the necessity for self-preservation is real and obvious, the State may organise its resistance, which is easily done, especially in these days. But the Church also possesses a natural right of self-defence;[3] and just as any kingdom may expect from its neighbours that they will not wilfully excite its subjects to revolt, nor be guilty of any injustice towards it, and moreover may take up arms to protect its interests, if its just complaints are disregarded; so the spiritual kingdom of the Church, in cases of pressing need and for the preservation of its vital interests, may, when all representations fail, have resort to any means of defence in its power.[4] Döllinger, on this subject, makes Bossuet's words his own: 'When necessity calls for it the Pope can do *everything*—of course with the reservation of observing God's laws.' He designates the Papal authority as one truly sovereign and free, 'necessarily endowed according to its nature and constitution with an extraordinary power for extraordinary cases and needs, whereby it may make all merely human rights bow before it, and appoint or allow exceptions to rules.'[5] Ever according to the requirements of different times the Pope under the guidance of Providence has to increase or relax the strictness of ecclesiastical law, and for new maladies to provide new remedies;[6] and he must take special measures against the union of wickedness and power.[7] Thus the doctrine, that the Pope is to be compared to a free prince active throughout the entire Church, is no merely mediæval doctrine,[8] but one that is implied by the nature and essence of the primacy.

[1] Anton. Cordubens. quaestion. l. iv. q. 10, dict. 3; l. iii. q. 13, reg. 8.

Sylvester in Summa v. Obedientia, n. 5, 6. Andradius in defens. Trid. Fid. l. i. Paris, TT. pro Conc. Basil. (in Monarchia, ed. Haiminsfeldii, t. i.) contra Leonem, p. x. Cajetan. t. i. Opusc. Tract. i. de potest. Papae, c. xxvii. Victoria, Relect. 1, de potest. Eccles. q. ult. n. 3. Sotus in l. iv. dist. 25, q. 2, a. 2. Driedo, l. ii. de Libertate Christiana, c. ii. L. Molina, Tract. ii. de Justitia et Jure, disput. 31, n. 4, 5, p. 64. See also Turrecremata, Summa, l. ii. c. cvi. pp. 246, 247. Bellarmin. de Rom. Pontif. l. ii. c. xxix. de auctore Concil. l. ii. c. ult. p. 51; Opp. t. ii. ed. 1721. Card. Sfondrat. Regale Sacerdot. l. ii. c. xiv. n. 4, p. 416, ed. 1684. Cf. Caron, Remonstr. Hibern. P. i. c. v. n. 16-22, pp. 12, 13.

[2] Bianchi, t. iii. l. i. § 5, n. 2, p. 43 seq. Mamachi, t. iv. p. 258.

[3] L. iii. de Just. et Jure, ff. i. 1; c. iii. de Sent. Excom. v. 39.

[4] The jus cavendi is therefore reciprocal. Phillips, Kirchenrecht, vol. ii. § 109, pp. 524-530.

[5] Döllinger, Kirche und Kirchen, pp. 39, 40.

[6] Abbot Wibald, of Stablo and Corvey, wrote (Ep. 114, p. 1208) to Eugenius III.: 'Licuit semperque licebit Romano Pontifici pro rerum qualitate et temporum varietate rigorem canonum intendere vel remittere et nova remedia novis morbis adhibere.' Cf. Ep. 191, p. 1288 seq.

[7] Bernard. de Consid. l. iv. c. vii. n. 23: 'Ubi malitiae juncta potentia est, aliquid tibi supra hominem praesumendum. Vultus tuus super facientes mala. Timeat spiritum irae tuae, qui hominum non veretur, gladium non formidat.'

[8] Syllabus, prop. 34, taken from the apostolic letter of 22 August 1851, against J. N. Nuytz.

§ 3.

But though a preëminence of the Church over the State, an ideal superiority of the Church, is assumed, this doctrine contains in reality none of the dangers often attributed to it. It by no means 'annihilates' or 'destroys' the civil power. For the superiority of the Church over the civil power is only called forth practically when the latter is no longer within its own province, when the interests in question are not purely civil, but have also a religious character. In its own province the civil power is fully independent as long as it does no injury to religion.[1] The Church does not demand a recognition of her superiority over the State for the promotion of the personal and temporal interests of her rulers, but only for the maintenance of the truth revealed by God, which is for the true interest of the State and the Christian people. She only requires that the recognition of God as the source of every right shall not merely be speculative and theoretical, but practically and truly acted

upon by the State, or at least that it shall not be positively contravened, which ever will be and ever has been injurious to the State. We must also remember the incontrovertible theological principle that Grace does not destroy Nature, that the supernatural order does not annul the natural order.[2] The Church could not possibly exercise everywhere the functions of the civil power, just as little as the civil power could exercise the functions of the Church. The Church needs the State as the State needs the Church.[3] The Popes have laid no less stress on the coördination of the two powers than on the superiority of the Church. Innocent III. in a letter to the princes of the German Empire—an important document—brings forward from Holy Scripture four images to illustrate the position of the two powers,[4] namely: the two Cherubim over the ark of the Covenant (Exodus xxxvii. 7 seq.), the two pillars in the porch of the Temple (3 Kings vii. 15), the two lights in the firmament of heaven (Genesis i. 14 seq.), and the two swords (St. Luke xxii. 38). Of these images, the two first are only applicable to a coördination of Church and State; and, as the Pope uses it, the fourth also illustrates this coördination.

[1] S. Thom. in l. ii. Sent. d. et q. ult.: 'In tantum saecularis potestas est sub spirituali, in quantum est ei a Deo supposita, sc. *in his, quae ad animarum salutem pertinent;* et ideo in his magis est obediendum potestati spirituali quam saeculari. In his vero, *quae ad jus civile pertinent*, magis est obediendum potestati saeculari quam spirituali, secundum illud: Reddite quae sunt Caesaris, Caesari,' &c.

[2] S. Thom. Sum. 2, 2, q. 10, a. 10: 'Jus divinum, quod est ex gratia, non tollit jus humanum, quod est ex naturali ratione.' Cf. Suarez, de Legibus, l. iii. c. vi. n. 9.

[3] Petrus Dam. l. iii. ep. 6, ad archiepisc. Colon.

[4] Reg. super negotio Rom. Imperii, Ep. 2. Migne, ccxvi. p. 997.

§ 4.

The two powers are not independent of each other in such a way that the one should have no need of and pay no attention to the other. On the contrary, each should always be ready to lend a willing ear to the representations of the other, and to redress all well-founded grievances. And in particular the State must obey the divine law committed to the Church.

'The independence of the two powers,' says Phillips, 'can only mean that both are free in their exertions to fulfil their natural end; the Church has not to interfere in civil affairs, nor the State in ecclesiastical. The spiritual power has not to busy itself with the affairs of republics and kingdoms, nor with the temporal causes in the whole world; for these the civil power has to care, and as regards them it is the highest power and independent of the Church, provided these temporal matters do not themselves become opposed to the divine law.'[1] But for this limitation the liberty of conscience guaranteed to each Catholic citizen by modern constitutions[2] would be violated, a grave injustice would be done, and the well-being of the State itself endangered. The words of St. Bernard addressed to the French King Louis VII. are still true: 'When the rulers of the earth make no opposition to the divine law, then is it that they hold their kingdoms and their rights entire and with full power.'[3]

[1] Phillips, Kirchenrecht, vol. ii. § 109, pp. 520, 521.

[2] In this way modern Constitutions conform to those religious requirements which are of a *negative* kind; *i. e.* that the State must command nothing which the Church must forbid, nor forbid what the Church must command. Cf. S. Thom. 1, 2, q. 1, a. 4; q. 96, a. 2.

[3] S. Bern. Ep. 256, c. i. p. 462.

§ 5.

Juridical independence is essential to the State. There should exist within it no right of independent individual redress. No opposition to the final decision of its supreme courts should have any legal force. In the province which belongs to it no other power should issue commands. But this juridical independence does not exclude a wide moral dependence, which always exists and operates in various ways.[1] 'The legislator,' says Walter, 'must be conscious that he never stands upon a quite independent footing, from which he can proceed as he will; for the actual circumstances, the customs, the spirit of the nation, limit his power in all directions.'[2] With regard to those sins which, being outwardly recognisable, *can* be made penal offences, it is not to be decided offhand whether they

ought to be made such; but this depends on how far religion, morality, and law are merged together by the nation we may be regarding; and this again depends on the degree of civilisation it has reached.[3] The exercise of the State authority to protect public morality is by no means to be gainsaid;[4] but it has 'a limit from the fact that outward force cannot reach the conscience and the dispositions of heart, on which morality ultimately depends. These dispositions are determined by our free will, led by the intellect, which apprehends morality. This apprehension is the result of the right use of our religious and moral faculties, and thus is the product of purely spiritual operations. Moreover to keep it alive and vigorous is the special care of the Church. Consequently the State has not to enjoin under pains and penalties the performance of moral actions unless they are also duties of justice;* for if they are done under compulsion they lose their meritorious character.'[5]

Every State is *morally* dependent to a great degree upon the circumstances in which it is placed: its climate and geographical position; its commerce, industry, and scientific acquirements; the peculiarities of its provinces and of the races under its dominion; the development of the neighbouring countries and its treaties with them; lastly, public opinion and the state of civilisation in general. Who will deny that at least in equal measure it is morally dependent upon the religious ideas of its inhabitants, and upon ecclesiastical institutions?[6] Religion has always exercised great influence upon nations, and through them upon governments. In proportion to its extent and activity every religious body has exercised an indirect authority over the government of the State. This influence, however great in ordinary times, does not, since it is purely moral and not juridical, make any change in the natural rights of the civil power, but only keeps it in check, and puts before it a certain

* We may explain that moralists divide duties into duties of love (officia caritatis) and duties of justice (officia justitiae). The former, such as the duty of prayer, of gratitude, or of filial affection, are uncompulsory. The latter, such as the duty to pay our debts, or abstain from assaulting or insulting others, are compulsory. [TR.]

character which its entire course of action should assume. On her side the Church can only exercise a moral influence in so far as she gains the support of public opinion. This she can only do by moderation and by keeping her claims within the limits set by justice. She can only conquer when the goodwill of the faithful is on her side, and when they are borne up by the conviction of the justice of her cause.[7] This is really the foundation of the doctrine of the indirect power of the Church over temporal affairs. 'This power can exist, even if the civil rulers be unwilling, in the case when they are in contest with the Church and public opinion is against them.'[8] For that side conquers to which public opinion is favourable. So true is this that those States which pay no regard to the Church, but give themselves up to the dictates of Liberalism, only act thus because they believe that public opinion supports and requires such principles. In truth a direct and really despotic power is exercised in our modern States by rationalism or so-called free thought; that is, by those men of science whose motto is: 'La science, c'est moi.' And the civil power is less averse to their influence, because they reject the immutable principles of religion and morality, which are after all the only safeguards of liberty.

[1] Beidtel, Das Canonische Recht, p. 23 seq. 55.
[2] Walter, Naturrecht und Politik, § 390, p. 363.
[3] Ibid. § 415, p. 392.
[4] Pignatelli, Consult. can. t. ii. cons. 56, pp. 112, 113, n. 11-21.
[5] Walter, l.c. § 447, pp. 428, 429.
[6] Though not allowing religion to be the formal ground of any political rights, the State 'must always pay it regard as influencing the conduct of the citizens in their private legal relations, and as a source of social forms and social dignity; just as the State has to pay regard to money and credit.' Von Moy, in the Archiv für Kathol. Kirchenrecht, vol. xii. pp. 65, 66.
[7] Beidtel, l.c. pp. 55, 584 seq. 356 seq.
[8] Ibid. p. 350.

§ 6.

No State authority can claim to be absolutely boundless. False, then, is the 39th proposition condemned in the Syllabus;[1] for it asserts that the State is the origin and the source of all

rights (God alone is this), and that it possesses rights circumscribed by no limits. The State is finite, and nothing finite is without limits. The State has external physical limits in its geographical boundaries; and internal moral limits in the nature and aim of its existence. 'In the very notion of the State,' says F. Walter, 'considered as an association of reasonable moral beings, is contained a moral limitation of its power. This must be recognised or rather presupposed by every form of government that is not to be unworthy of the human race. Power is not its own end, but is for the general good. Every constitution is bound to make this moral limitation actively felt throughout its whole organisation; and this cannot be done merely by external forms. It is essential to the welfare of the State that this moral limitation of its power should be thus felt. Where it is wanting, power becomes arbitrary and self-interested; and government, as we can see, not in monarchies only, but also in republics, becomes despotism.'[2]

But this brings us to more general considerations.[3] The great conservative* principle, in opposition to that of revolutionists, is, that everywhere and under all circumstances the rights of all be respected—the rights that in the particular State have gradually developed in accordance with revealed and natural law. The State that follows this principle does not cut itself off from its past history in favour of abstract theories: it builds not on new but on the old foundations. A Conservative can approve of no law that violates this principle. And as it is the civil power which has to protect, enforce, and develop the various rights and obligations of all its subjects, it would fail, according to the conservative principle, to fulfil this its proper end, if it deserted the path of organic legal development—that is, if it made laws in *doctrinaire* fashion, without regard to the history of the community. It can only fulfil its end if it regards its authority, not as a right that cancels all other rights existing among its subjects, but merely as one (though it may be the highest) among many other rights. Consequently (according to the conservative principle) the right of the civil power is limited by various

* On the terms 'Liberal' and 'Conservative,' see Introduction. [Tr.]

rights existing in the community.*[4] The subjects can demand that the civil power respect their rights, while they are bound in their turn to respect the rights of the civil power—that is, they are bound to be subject and obedient to it, so that it may be able to fulfil its mission, which is both its duty and its right.[5] This mutual relation of rights and duties between sovereign and subject is what St. Paul refers to (Rom. xiii. 1-8, Eph. vi. 1-9), and which in German law is called 'Treue' (loyalty). When subject and sovereign both fulfil their obligations, then there is said to be 'Friede' (peace). From this point of view, disloyalty can occur on one side as well as on the other, and the sovereign just as much as the subject can be conceived as disloyal and disturbing the peace. Quite in contrast, the revolutionary principle develops the State on an abstract system, without regard to the history and traditions of the particular country. In consequence, all existing laws and institutions which will not square with the abstract principle of government that has been adopted are swept away, and no personal rights of the subjects, that the State is bound to respect, are any longer recognised: only shadows of rights and of the holders of rights remain—shadows that disappear as soon as the State with its all-absorbing right ceases to regard them. Here all mutual relation of rights and duties between subject and sovereign is at an end: the State alone is active, the subject is passive, and he only becomes active in so far as, putting off the quality of subject, he becomes himself a part of the sovereign power.[6]

[1] The proposition is: 'Reipublicae status, ut pote omnium jurium origo et fons, jure quodum pollet nullis circumscripto limitibus.' It is extracted from the Allocution 'Maxima,' of June 9, 1862, where we read: 'Omnia .... legitimae cujusque proprietatis jura invadere, destruere contendunt, ac praeterea animo et cogitatione confingunt jus quoddam nullis circum-

* Here has been omitted the following passage: 'Subject eines Rechtes aber ist immer entweder eine Person oder ein zum Dienste der Person stehendes, deshalb mit Personenrecht ausgestattetes Institut. Indem nun das Recht des Staates an dem Rechte der Person seine Schranke hat, hat es seine Schranke an der Person, am Unterthanen selbst.' The omission does not injure the text; and to have made the passage intelligible, a lengthy note or lengthy paraphrase would have been needful. [TR.]

scriptum limitibus, quo reipublicae statum pollere existimant, quem omnium jurium originem et fontem esse temere arbitrantur.' This is the theory called by Liberatore (La Chiesa e lo Stato, Napoli, 1871, c. i. p. 1 seq.) absolute Liberalism.

[2] Walter, Naturrecht und Politik, § 257, p. 234.

[3] I am here following the excellent Catholic political writer, C. N. G. Rintel, Der Protestantismus als politisches Princip. Breslau, 1853, p. 15.

[4] Guizot, de l'Eglise, p. 167: 'Le caractère essentiel de l'esprit chrétien est la respect de la règle et du droit, de *tous les droits*, des droits de Dieu comme des droits de l'homme, *des droits des gouvernements comme des droits des peuples*, des droits du passé comme des droits de l'avenir. Le caractère dominant et permanent de l'esprit révolutionnaire est au contraire la passion, tantôt la passion de la licence, tantôt la passion d'une idée fixe et exclusive, devant laquelle s'évanouissent tous les droits qui la gênent et à laquelle tous les moyens sont bons pour se satisfaire.'

[5] Rintel, l.c. p. 16.

[6] Rintel, l.c. pp. 17, 18.

§ 7.

But the power of the Church is also limited,[1] and in such a way as to prevent her using it to the injury of the State. The Church cannot abolish free-will; she can devise no plan for forcing all men to obey her; she cannot compel us to internal conviction or to external submission. 'The whole power of the Church,' says the Jesuit, M. Liberatore,[2] 'is moral; she possesses the means of coercion only virtually, in so far as she has the right to demand them from the civil power, which is subordinate to her. Hence there is an almost absolute impossibility of abuse, and for two reasons: first, because having herself need of the protection of the civil power against the violators of her laws and disturbers of her peace, she is lead by the nature of her situation to pay scrupulous regard to the rights of the civil power, and rather surrenders to it what is hers than takes from it what is not hers; secondly, because the moral power with which alone the Church is formally endowed derives all its strength from the evidence of its justice. Consequently the Church always takes her stand on evident justice; and she could never think of making claims which could be proved to be unjust. Thus all things which evidently belong to the State, as matters which are purely civil and political, are quite safe from any danger of invasion by the ecclesiastical power.' If in doubtful

and disputed matters the question is about a general rule—a question of principle—it is clear to a Catholic that the Church, as teacher of truth and justice, cannot fall into error. If the question, however, is about the application of a principle, here the Church can claim no infallibility, and by her whole position is compelled to give full weight to the grounds adduced by the opposing party; and here in fact she has always shown, *salvis principiis*, the most compliant disposition.[3] We must also remember that in these cases the State, on its side, can meet half-way the advances of the Church, and that even supposing it has to put up with some grievance unredressed, this is a minor evil compared to a conflict with the Church, and the consequent scandal and disquiet among the faithful.[4] So stands the case where the State is founded on justice, and desires to deal justly with every single citizen. It is otherwise where a faction rules, which seeks at all hazards to trample down a Catholic minority; for here, in spite of pompous protestations of liberty, the government is a sheer despotism.

[1] Audisio, Droit public de l'Eglise, traduit par Labis, Louvain, 1864, t. i. p. 307: 'Dieu seul, à proprement parler, ne relève que de lui-même. L'Eglise et l'Etat, étant ses dépendances, et comme deux provinces ou départements de son gouvernement d'ici-bas, n'ont qu'une autonomie non pas absolue, mais *relative*.'

[2] La Chiesa e lo Stato, c. i. a. 8, pp. 113, 114.

[3] Cardinal Gonsalvi, Note of Aug. 10, 1819. Cardinal Antonelli, Note of 29 Feb. 1860.

[4] Liberatore, l.c. pp. 114, 115.

§ 8.

The Christian (Catholic) State, now indeed no longer existent, has, then, nothing to fear from the theological doctrine of the superiority of the Church, deduced from reason and the Fathers; while the States which give no preference to any form of Christianity, and still more those hostile to Christianity, have long taken good care that this doctrine shall in no form have any practical importance. 'The bond of union between Church and State,' says a recent theologian,[1] 'has so suffered through the unhappy division of faith in the sixteenth century, that a complete union of the two powers, such as their nature requires, is no longer to be

thought of. The Church, indeed, true to her mission, can never alter her conduct towards the State; but with the aforesaid division of faith, the position of the State to the Church must be changed. Whilst all the members of the State still honoured the Church as the guardian of the true faith and morality, the State itself was able to give to her doctrines of faith and morality a *positive* recognition, that is, to make them the base of its own conduct, especially of its legislation. This could not go on when in the same State several religions were recognised; and now we must be content if the State gives a *negative* recognition to the doctrines of the Church, that is, if it keep from violating them, and thus give its support to the operations of the Church.' The natural and immediate end of the State is the protection of rights; its remoter end, the temporal felicity of its members. The civil government has no competitor in its office of protecting the whole society and its members both from internal and external attacks.[2] Von Moy well says:[3] 'Since Christianity has set a supernatural end to our life on earth, and Christ has founded the Church for this end, it inevitably follows, at least for those who recognise this end and this Church, that they are bound to bring the order of this earthly life into harmony with its supernatural end, and, at least in this regard, not to place themselves in opposition to the Church.[4] This conclusion applies to *all* earthly aims and *all* earthly institutions; and those who recognise the aforesaid supernatural end and supernatural Church are all, in whatsoever earthly situation they may be, bound by the aforesaid obligation. Christianity and the Church may or may not be recognised; but the rational conclusion from a recognition of them cannot be controverted. As long, then, as the Christian faith universally prevailed, and the Church was universally regarded as an institution founded by Christ for the salvation of men, disputes could indeed arise between the Pope and the Emperor, between bishops and civil princes, about *particular* rights and obligations; but the *end* of the State, as well as of all the things of earth, could not be opposed to the end of the Church: the temporal order of things could not be opposed to the ecclesiastical order of things, as altogether independent

and simply an end in itself. Nor again, as had happened in heathen times, could Church and State be merged into one; but they remained rationally united. The Church could no longer identify herself with any State or any civil order; but every State found in her a source of elevation and consecration for its earthly efforts and institutions, and a healing balsam for the necessities from which they sprang. All this has been changed by the Reformation,[5] which recognised, indeed, the supernatural end that had been given to our earthly life by Christianity, but rejected the Divine institution of the Church, with her sacerdotal and teaching office.[6] The work of the Church was thus transferred to the State, and the Church made an institution of the State. Religion became at once a serviceable instrument in politics: and this occurred not merely in Protestant, but also in Catholic countries; for the need of protection against the violence and encroachments of Protestantism gave such great prominence to the civil sword and State authority, and made the position of the rulers of the Church so difficult, that even in Catholic countries the State grievously encroached on the religious domain.[7] This abuse was formally erected into a system, and called in France, Gallicanism; in Germany, Febronianism or Josephism; in Spain and Portugal, Pombalism. It was a system of hypocrisy and meanness, and its results were soon evident. In the Protestant States the Reformation continued its work of disintegration; and the break up into a multitude of sects at length rendered it impossible for the governments to continue their ecclesiastical dominion: in the Catholic States the depreciation and misuse of all that was most holy, the insubordination of the powerful and the powerlessness of the clergy, shook the faith of the masses, and in a great measure wholly destroyed that of the upper classes.[8] This led to the French Revolution, which rejected Christianity and Church alike, and set up the State anew as an institution reposing simply on human wills, and existing simply for this life and for earthly ends. This is the "modern State," according to the pattern of which all other States of Europe have gradually transformed themselves, and made its constitution and principles their own. When it first arose it made a vigorous attempt to

extirpate Christianity, and a weak attempt to create a heathen religion[9] as a support for itself. As both failed, it had to allow Christianity to exist, but only as a matter of personal taste and individual opinion[10]—only as a form, in itself indifferent of religious views, having no claim whatever to political influence or recognised legal position. This is the modern principle of "freedom of conscience" which is as necessarily and essentially connected with the modern State as the idea of the finite with that of the infinite.'

[1] Reinerding, 'Der Ursprung und die Gränzen der St. Gewalt,' in the Archiv für Kath. Kirchenrecht, vol. xiv. pp. 191, 192.

[2] Idem, Archiv, vol. xiii. p. 378 seq.

[3] Der moderne Staat und die Kath. Kirche: Archiv, vol. xii. p. 62.

[4] See Suarez, de Leg. vol. iii. p. 7.

[5] Bluntschli, in Sybel's Histor. Zeitschrift, 1861, vol. i. p. 83, recalls the heretics from Arnold of Brescia to Wiclif and Huss, who represented the national idea. The national-political movement played a great part in the Reformation, though the Reformers were scarcely aware of it.

[6] Bluntschli, l.c. pp. 83, 84, says: 'The Reformers did not indeed renounce the idea of a community of the faithful, but they willingly *subordinated to the State the external manifestation of the Church*, and recognised in the State also a moral nature and end (but this had not been previously denied). To the State exclusively they attributed all power of compulsion, and consequently *all* legislation, government, and jurisdiction. The Protestant State was not yet fully emancipated from theological doctrines, but fully from the rule of the Church. In its essence it was a first attempt, as yet indistinct, after the modern State, which finally has freed itself from denominational limitations and the authority of theology.'

[7] The Catholic princes who had done good service to the Church at the time of the Reformation, and who had received from her in consequence great privileges, soon assumed the character of her guardians, and in this way pushed the power of the State beyond its former limits.

[8] Though this state of things came about in most Catholic countries, its characteristic was abandonment and persecution of Catholicism. It is hard to understand the reproach directed (by Schulte, vol. ii. p. 16) against the Church and the Holy See, that the Revolution is permanently installed in Catholic countries. Decatholicised and dechristianised States are no longer Catholic. Under the revolutionary governments of Spain, Mexico, and Italy, the Pope and faithful Catholics have received only ill-treatment, and more of it than any one else.

[9] On August 10 and November 10, 1793.

[10] This is the view of the Revue des Deux Mondes, Avril et Mai 1869, see espec. p. 701.

§ 9.

Two theories especially have gained prevalence outside the

Church. One identifies or at least merges together Church and State, causing the former to be absorbed by the latter, and desiring the State to be raised into a god and worshipped. The other theory desires the two to be separated, but only in such a manner that the Church may be subordinated to the State. The first theory has found especial support among the followers of Hegel. It is maintained by Laurent, who rejects the notion of the Church even as an independent spiritual power, and dissolves it into the State, which indeed he would have limited by the sovereignty of individuals and by private law.[1] The second theory, however, seems the most prevalent. According to Bluntschli,[2] 'Our century aspires after the separation, not the mingling of the two provinces;' and his formula is: External superiority of the State over the Church, and internal equality of these two moral persons.[3] It is not quite clear which of the two theories is to gain the upper hand in Germany; perhaps Hegel's notion of the State will first become realised, and inaugurate a witches' Sabbath, out of which the second theory will be able to develop. However this may be, both theories are equally opposed to the Catholic Church; she is universal, and thus cannot be identified with any single State; her aim extends far beyond earthly existence; she knows that though she is distinct from the State, it is not God's will for her to be separated from it; she knows that she is a *perfect society*,[4] with her own particular end and means and field of operations, and that she cannot subordinate to any earthly end her supernatural end. A perfect society is one which is neither part of another, nor from the nature of its end falling within the province of another.[5] Both the theories we have mentioned have sought to deny to the Church the character of a perfect society, of an independent existence, or of a kingdom. Thus the Protestant jurist, Samuel Pufendorf,[6] held the following view: 'If we assume the independence of the Church a double sovereignty is introduced, since under the pretence of deciding disputes men can be held in subjection just as well as by commands relative to civil conduct; since, further, a spiritual chief, unless he confine himself to imitating our Lord in preaching and doing works of

mercy, and submits patiently to everything,[7] must be able to carry out the judgments he pronounces; and this again entails a double sovereignty, or if the carrying out is transferred to the State, the latter is degraded into being the servant or bailiff of the Church;[8] it follows that the Church should only be a subordinate society within the State; (a 'collegium' instead of a 'societas perfecta.')[9] Such views were elaborated in many works of the last century,[10] and the ecclesiastical authority became step by step so narrowed as to be reduced to a mere shadow. The State desired to be all in all. 'Since the Reformation,' says a modern jurist,[11] 'the right of supremacy over ecclesiastical affairs (jus majestatis circa sacra) became an integral portion of the conception of the modern State. This brings about the enslavement of the Church, making constantly more firm the chain whereby the State holds her fast. Her constitution, her internal organisation, her power of jurisdiction, all that concerns the education of the clergy—nay, even matters of science, of faith, and of ritual—all these become subject not merely to the protestation or inspection (jus reprehendendi, cavendi, inspiciendi, placetum), but also to the direction of the State (jus dirigendi).[12] Thus the positions of Church and State have been quite changed, and the words of the old writer Goffridus have come true: "If the Church is subjected to the civil power, she who was before a mistress will become a slave."[13] In truth, the absolutist doctrine of the State, making it not merely the highest but the only factor of all development, the one source of every right and every security,[14] leaves no room for the existence of an independent Church, which would be incompatible with it, and only admits religious associations with the rights of corporations.' This rejection of all ecclesiastical independence is, indeed, here and there softened down in its practical application, and the Church can often be content if her rights as a corporation are respected and protected; but she can never regard as a true doctrine that which disregards her divine origin and divine rights.

[1] Bluntschli, l.c. p. 85 seq.
[2] Ibid. p. 87.

[3] Ibid. p. 88. Bluntschli allows the similitude of marriage between the two, provided the State (l'êtat rather than respublica, civitas, imperium—the State in the modern rather than in the old sense) be taken as the husband, the Church as the wife.

[4] Syllabus, prop. 19, from the Allocution of Dec. 9, 1854, Dec. 17, 1860, June 9, 1862.

[5] S. Thom. Sum. 1, 2, qu. 90, a. 3, ad 3.

[6] Samuel Pufendorf, de habitu religionis Christianæ ad vitam civilem, § 11, p. 33, ed. Brem. 1687, will not allow that the Church is a status, a summo imperio civili separatus vel exemptus. By status he means a conjunctio plurium hominum, quae imperio per homines administrato sibi proprio et aliunde non dependente continetur. Cf. § 32, p. 100; also Joh. Heineccius, Element. jur. natur. et gent. l. ii. n. 183 seq. t. i. p. ii. Opp.

[7] The proposition of M. A. de Dominis, de rep. Christ. l. i. c. i. n. 13: 'What Christ on earth in mortal frame visibly practised, that, *and that alone*, did He commission men His servants to practise; and what in mortal body He did not practise visibly, that He did not intrust to mortals, and was bound not to intrust it, but to reserve it to Himself as head and master,' was styled in 1618 by the Cologne theological faculty the heretical foundation of the heresy which De Dominis afterwards developed further (Du Plessis d'Argentré, Collect. Judic. t. iii. p. ii. p. 194), and which also ex negatione violentae dominationis deduces a negatio legitimae potestatis (ibid. p. 195).

[8] Pufendorf, l.c. § 35, p. 116 seq. Just the same language is now used against the Catholic Church. They say, for example, that Bavaria has two governments, one at Rome, the other at Munich.

[9] Ibid. § 39, p. 130 seq. This is further developed by Justus Henning Böhmer, Jur. Parochial. § i. c. i. ii. iii., and Jur. Eccles. Protest. l. i. tit. 33, n. 8.

[10] One of these was called: Principes sur l'essence, la distinction et les limites des deux puissances, spirituelle et temporelle. Ouvrage posthume du Père La Borde de l'Oratoire. It was forbidden by the Roman Inquisition, August 5, 1753, and Benedict XIV. warned the bishops of Poland against it, as it was much spread there. Roscovány, Mon. t. iii. pp. 154-156, n. 473.

[11] Hübler, in Dove's Zeitschrift für Kirchenrecht, 1863, vol. iii. p. 418.

[12] Hübler here refers to Bluntschli, Allgem. Staatsrecht, vol. ii. p. 379 seq., and to the Church laws of Baden and Würtemberg in 1860 and 1862.

[13] Goffrid. Opusc. iv.; Sirmond. Opp. iii. 589: 'Quando vero Ecclesia seculari potestati subjicitur, quae ante domina erat, ancilla efficitur.'

[14] Hübler here refers to Aegidi (Erlanger, Theol. Ztschr. N.F. vol. xxxvi.), and Hermann (Meszner's Evang. K. Ztg. 1859).

§ 10.

Where, however, modern States exist with 'freedom of conscience,' and several religious denominations with equal rights, it is impossible fully to carry out the principles of the Church.

Rules for a society in good health cannot be applied in a society that is sick. 'We may still hold,' says Von Moy,[1] 'as unnatural and unreasonable the complete disregard by the modern State of every aim of life that goes beyond man's existence on earth, especially as it is really a practical denial of the immortality of the soul; none the less, we must recognise it as a fact which we are not able to alter; nay, we must even admit that in consequence of our present religious divisions there is a certain necessity and justification for it, and for the consequent position of the State. For it is the position which, through the Reformation in Germany, was prepared for the emperor and empire by the treaty of Westphalia, and which by the consequences of that treaty became common to all governments, and acted in favour of all creeds. The right of dissidents to migrate into a country where their own religion prevailed (jus eundi in partes) was a natural consequence. But further, the right which was claimed and maintained against the emperor by the German princes to determine at pleasure the creed of themselves and their subjects, can with equal reason be claimed by every father of a family or independent citizen against his own government; and in immediate connection with this is the right in matters of conscience to be independent of any vote of a majority in a political assembly.' A Catholic, as Von Moy shows, has a right in every State to—1. free intercourse with the Pope and the bishops as to ecclesiastical affairs; 2. free profession of his faith by word or writing; 3. free exercise of worship and satisfaction of his religious needs both within and without the sacred edifices; 4. free pursuit of Catholic moral teaching, especially as to marriage, education, works of charity, and religious associations; 5. free disposition of property for ecclesiastical purposes. But the influence of the Church on temporal matters, as exercised in the Middle Ages, is impracticable in modern States, unless all dissidents were freely to embrace the Catholic faith, and the civil power itself were to desire the exercise of this influence. But there is not the least appearance of this happening.

Nevertheless, we must always and everywhere hold fast the great truth inseparable from Christianity, that the salvation of

the soul ranks far above all earthly goods; that the kingdom of God is above the kingdom of the world—the spiritual above the temporal. From Scripture and the early Church comes the truth that the supernatural end must take precedence of any other.

[1] Der moderne Staat und die Katholische Kirche, pp. 63, 64.

Part II. The Declarations of the Popes give no Cause for Apprehension.

§ 1. Nothing defined as to the power of the Church over temporal matters. § 2. The Bull 'Unam sanctam.' § 3. Further objections. § 4. Approbation of the Bull by the Fifth Council of the Lateran. § 5. Utterances on ecclesiastical immunities. § 6. The Bull 'Cum ex apostolatus officio.' § 7. Further objections. § 8. The Bull 'Cum quorumdam.' § 9. The Bull 'In coena Domini.' § 10. Other Bulls also irrelevant. § 11. The Schema as to the Church that was laid before the Vatican Council. § 12. Canons in this Schema on the relation of Church and State. § 13. The three last chapters of the Schema. § 14. Confusion of ideas among our opponents.

§ 1.

The Church has never declared it to be an article of faith that temporal princes, as such, are in temporal matters subject to the Pope.[1] Individual theologians, as Bellarmine and Suarez, have indeed held it to be a dogma that in certain cases they are subject;[2] but these theologians held Papal Infallibility to be also a dogma; and just as their opinion on the latter point does not prove that Papal Infallibility was a really defined dogma before the decision of July 18, 1870, so their opinion on the former point does not prove that the power of the Church over temporal matters is a dogma before a decision has been published; and this has not yet taken place.[3]

[1] Cardinal Du Perron, Replic. l. iv. p. 745. Cf. Bossuet, Defens. Dissert. Praev. § 89, p. 75. Natalis Alexander, Hist. Eccl. §§ 13, 14, Diss. ix. a. 7, n. 4, t. xvi. p. 350, ed. Bing. Bossuet, Defensio Declar. l. i. § 1, c. xi. p. 108: 'Placet autem hic in antecessum expromere .... Gregorium VII. aliosve Pontifices .... nunquam decreto ad omnem Ecclesiam edito docuisse, eam sententiam, quae ecclesiasticae potestati talia vindicaret, ad integritatem fidei Catholicae aut ecclesiastici dogmatis pertinere.... Quare etiam ii, qui pontificiam infallibitatem vel maxime tuentur, ab hac sententia abhorrere deque his, ut et de aliis pontificium gestis, libere disputare possunt.' Cf. l. iii. c. xxiv. p. 326 seq., c. i. seq. p. 272 seq. Pey, De l'Au-

torité des deux Puissances, Strassbourg, 1780, vol. i. p. 91: 'Les Papes eux-mêmes dans les décrets, où ils s'efforçaient d'établir leur prétentions, n'ont jamais rien défini expressément là-dessus.' Fleury, Hist. Ecclés. t. xix. l. 90, n. 18. Gosselin, op. cit. ii. p. 293 seq. Bianchi, t. i. l. i. § 21, n. 1, p. 184. Mamachi, op. cit. t. iv. p. 244. John Trithemius, Chron. Hirsang. ad annum 1106. Martin Gerbert, of St. Blase, de legitima Ecclesiae potestate circa sacra et profana: typis monasterii S. Blasii, 1761, l. iv. c. i. n. 12, p. 637 seq. Phillips, Kirchenrecht, vol. ii. § 116, p. 627. Beidtel, Das Canonische Recht, p. 360. Spalding, Archbishop of Baltimore, Lectures on the Evidences of Catholicity, 4th edit. 1866, pp. 377, 378.

[2] Quoted by Döllinger, Erwägungen für die Bischöfe des Concils, München, 1869, p. 13, § 19.

[3] So also Covaruvias, t. i. Relect. c. peccatum de R. J. in 6, p. ii. § 9, n. 7, says: 'Hactenus nihil certum in hac controversia Ecclesia Catholica definivit; propterea disputationi locus est absque ulla haereseos suspicione.' He then cites a number of older writers. Similarly Navarrus, in c. Novit. de Judic. vol. ii. p. 1, n. 3, &c., cited by Caron, Remonstrantia Hibernorum, p. ii. c. ix. p. 91.

§ 2.

Great efforts indeed have been made to discover such a decision, and the Bull 'Unam sanctam' of Boniface VIII. has been brought forward as such.[1] But in this Bull it is only defined that all must give the due religious obedience to the Pope, not obedience in purely temporal matters.[2] One sentence alone is marked out as a definition of the Church by the words: 'We declare, define, and proclaim.' All the rest of the Bull is no definition. And we must, as before observed, in every doctrinal decision of the Pope or General Council, distinguish between the definition itself, and the grounds or reasons alleged for it. Only the definition itself is infallible. This is no new distinction, but one that has ever been well known to theologians and canonists, and also to the Roman Court.[3] The reasons alleged are doubtless often of great importance for rightly understanding the particular question, but they have not the same binding force. It is thus no contradiction to this view (as the *Allgemeine Zeitung* of May 6, 1871, asserted), that Bishop Fessler blamed Schulte's book for citing the decisions of the Vatican Council without the reasons prefixed by the Council; for precisely these reasons serve to remove many misunderstandings about the decision itself.

[1] By 'Janus,' Döllinger, Schulte, and others.

[2] Pey, l.c.: 'Boniface VIII. termine sa Bulle "Unam sanctam" contre Philippe le Bel par la maxime, qu'aucun Catholique ne conteste, savoir que tous les fidèles doivent être soumis au Souverain Pontife de nécessité de salut, mais sans définir, qu'on doive lui être soumis même sur les matières temporelles.' See Walter, Kirchenrecht, § 44, p. 81, n. 15, 11th ed. Phillips, Kirchenrecht, vol. iii. p. 256. Rintel, Der Protestantismus als politische Princep. Breslau, 1853, pp. 105, 106. Merkle, in the Augsburg Pastoralblatt, 21 May 1870, who cites Fénélon, de Auct. Rom. Pont. c. xxvii. I have treated the Bull in detail in the work Ueber das Vaticanische Concil. Mainz, pp. 36-45.

[3] In the work mentioned in the previous note I have cited the Dominican bishop Melchior Canus, Bellarmine, Suarez, the Franciscan Bianchi, the Capuchin J. A. Benettis, the canonist Berardi, Pope Gregory XVI. (as Maurus Cappellari), Francis Veronius, Montagne, De la Hogue, Carrière, Gosselin, Pey, Beidtel, Wieser—truly a good number of important writers. We may add to them the Gallican Natalis Alexander, who says (H. E. § 13, 14, Dissert. ix. art. 2, n. 16, t. xvi. p. 331, ed. Bing.): 'Cujus (Bonif. VIII. in Bulla Unam sanctam) *argumentis* assentiri non tenemur, *quamvis* Ecclesiae Rom. ceterarum matri et magistrae in decretis fidei et morum *non parere sit nefas*.' And more fully he says (ibid. a. 7, n. 3, p. 349): 'Bonif. *in prooemio ac prolusione*, ut ita loquamur, definitionis suae ut homo ratiocinatur et Scripturam exponit; nihil humani ab ipso alienum putamus. . . . . In fine diplomatis § Porro pronunciat *ut pontifex*, doctrinam Scriptura sacra et traditione contentam, a Rom. et universali Ecclesia semper assertam velut dogma fidei Christianis universis proponit. "Porro," inquit, "subesse Rom. pontifici . . . . esse de necessitate salutis." Quod et nos ut dogma fidei recipimus, credimus, docemus, et praedicamus, de subjectione Christianorum omnium et singulorum, etiam regum et imperatorum, summo Pontifici jure divino in spiritualibus dumtaxat intellectum. Atque propter istam conclusionem, *quae sola vim definitionis et apostolici oraculi proprie habet*, sartam tectam hujus constitutionis auctoritatem voluit procul dubio Clemens V.'

§ 3.

It has been objected[1] that 'if this were so, it would follow that the doctrine of the power of the bishops as an ordinary and immediate power has not been dogmatically decided, since in the third canon this doctrine is only mentioned in the *introduction* to the real dogmatic decision. Would Bishop Fessler agree to this?' We believe he would certainly agree; for the doctrine of the power of the bishops needed no definition, being previously doubted by no one. The decree only intended to treat of the head of the Church; in so doing the doctrine of the episcopal power was also recognised, and this was sufficient for the purpose in hand. Secondly, it has been said: 'From

Bishop Fessler's assertion it would result that a Pope sitting down to write a dogmatic Bull would in one line possess, in the next be without, the gift of infallibility, and we should never know which of the two had been the case in any given line.' But this we do know perfectly, simply from the wording of the imperative (dispositive) clause. Any tyro in jurisprudence knows how to distinguish between the judicial judgment and the grounds for the decision, between the dispositivum and the motivum arresti, as the jurists of the French parliament used to express it.[2] The Popes have ever taken full care, even when they have not themselves drawn up the wording of the entire Bull, that the doctrine to be held fast (doctrina tenenda) be clearly expressed for every one, and they will be able to take the same care in future. If they do not, then they will have defined nothing. We must also remember that every doctrinal decision has its history, and that in the controversies preceding the decision the doctrine in question is made clear and prominent; moreover, the freedom of theological opinions allowed by the Church is a sure token that this or that point has not yet been defined. A third objection is that some bishops of the 'Opposition' have called this limitation of the definition absurd. But the authority of a minority of bishops eager to support their view can certainly not decide the matter, unless that view has weighty reasons in its favour. Our opponents reply that this is the case. They say the Pope intended to assert the complete subordination in spiritual and temporal matters of the King of France to the Holy See, since no one assailed the Pope's spiritual power. We answer that history proves just the reverse, for the Pope in the Consistory and the Cardinals in their letter to the French nobles expressly guard themselves against the misrepresentation of the French statesmen, and against the views they were falsely charged with holding. Surely we ought rather to believe the Pope, the Cardinals, and the theologians who followed, who had a constantly observed rule to guide them, rather than the intriguing Peter de Flotte with his companions, and those who had an interest to exaggerate the import of the Pope's words. Outside France the Bull gave no offence, and it was for France

alone that the thoroughly French Pope, Clement V., in order to pacify and appease his countrymen, made the declaration that through the said Bull France and its king suffered no prejudice, and were not bound to greater obedience to the Roman Church than before. It is, however, further objected that in two writings of the fourteenth century this Bull is regarded as defining the complete subjection of temporal princes to the Pope. But the authors of the *Defensor Pacis*, bitter enemies of the Holy See, are no authority, and moreover bring no proofs; while Alvarus Pelagius is an illogical writer,[3] and moreover considers as decided merely the question relating to the two swords belonging to the Church.[4] 'Still,' says Professor Huber, 'allowing Hergenröther's softening down of the Bull, the fact that the Pope is authorised to sit in judgment on the civil power as to matters of sin leaves a back door open for old theocratic absolutism to come in; for the Popes, who in a concrete case decide what is sin, have both in theory and practice asserted over sinful princes and magistrates the power of censure even so far as to depose them; and this was done not only before the time of Boniface, but long after him.'[5] To this we answer: (*a*) By the same mode of argument we can say the principle that the State may interfere in religious matters whenever they at all touch on civil life brings with it State absolutism over the Church, so that the latter is completely trodden under; for in individual cases the State decides what has regard to civil life, and often even claims the entire external side of religious life as within its jurisdiction. (*b*) According to history and existing documents the Popes have 'asserted over sinful princes and magistrates the power of censure, even so far as to depose them,' only as long as they could presume the continuance of the public law which prevailed in Christian Europe throughout the Middle Ages. It was only in the course of the sixteenth century that this public law was everywhere shattered: in the seventeenth and eighteenth it was altogether set aside. The Popes had still, as they must always have, a right to condemn any Catholic prince who was guilty of grave sins dangerous to religion, even though they could no longer inflict a punishment which brought

with it the loss of temporal power, since this was no longer a consequence of excommunication. Even the portion of the Bull not constituting the definition does not say that the civil power in its own sphere, that is, in purely temporal matters, is dependent on the spiritual power. As long as the former remains purely within its sphere it is independent. But just as the modern State claims an influence in religious matters whenever and so far as they touch the civil domain, so the Church can claim an influence, or at least a right of judging, on temporal matters, whenever they enter on the religious domain, and thus cease to be purely temporal. And this, in one form or another, she has always done. Boniface VIII. could quite well adduce in his Bull the doctrine universally taught in the schools without making it the subject of a dogmatic decision. (*c*) No mention is made of deposition in the whole Bull, but only of passing sentence, which can be done simply by excommunicating. As a final objection reference is made to the *Civiltà Cattolica*, which we are told, in the first number for February 1870, declared as heretical the doctrine that the State has its own province independent of the jurisdiction of the Church. But first of all, this Roman periodical, though its zeal and religious spirit have gained for it the praise and encouragement of the Holy Father, is not decisive as to doctrine, nor is anything more than the work of private individuals; and secondly, it contains no such declaration as alleged. One of its articles treats of the proposals made in hostility to the Council, and especially considers the case of rulers passing laws against the definitions of General Councils. Such laws, according to the ancient doctrine of the Church, are not binding in conscience. They are violations of freedom of conscience. He who believes the doctrinal decisions of the Pope are infallible can be compelled by no law to believe they are fallible. The article proceeds to speak of the superiority of the Church in the same sense as is used by the Fathers of the Church and the theologians of all centuries; at the same time it fully recognises that the civil power is from God. It moreover distinguishes that which Boniface VIII. *defined* (definisce), namely, that obedience

to the Pope is necessary to salvation, which without doubt is an article of faith; and that which he *proved* (stabilisce), namely, the subordination of the temporal to the spiritual power, which is the teaching of all theologians and canonists, and which no one can deny who understands the meaning of the words.

[1] By Berchtold, Die Unvereinbarkeit, &c. p. 20, note *.

[2] Every beginner in theology knows that in the Bull of Dec. 8, 1854, the words containing the definition are: 'Declaramus, pronunciamus et definimus, doctrinam, quae tenet, B.V. Mariam .... ab omni originalis culpae labe praeservatam immunem, esse a Deo revelatam, atque idcirco ab omnibus fidelibus firmiter constanterque credendam;' and that the rest is only further explanation. No less clearly marked is the definition of Boniface VIII.: 'Porro subesse Romano Pontifici omnem humanam creaturam (according to 1 Pet. ii. 13. Cf. Mark xvi. 15. Greg. M. hom. 29 in Evang. The fifth Lateran Council puts: Omnes Christi fideles) declaramus, dicimus, definimus et pronunciamus omnino esse de necessitate salutis.'

[3] Mamachi, l.c. p. 182, nota.

[4] De planctu Eccles. ii. 60: 'Pono extravagantem Bonifacii VIII., quae istam determinat quaestionem.'

[5] Huber, p. 39.

[6] In two cases, says the article, a subject is not bound to obey his superior: 1. when there is an opposing command of a higher authority; and 2. when the superior commands things concerning which the subject owes him no obedience. St. Thomas, 2, 2, q. 104, a. 5, is cited: 'Subditi in iis tantummodo superioribus suis obedire tenentur, in quibus ipsi superiores sublimioris potestatis praecepto non adversantur, et in quibus ipsi suis superioribus subjiciuntur. .... In his quae pertinent ad interiorem motum voluntatis homo non tenetur homini obedire, sed solum Deo.' And reference is made to the words of St. Augustine, Serm. 6 de Verb. Dom.: 'If the proconsul commands one thing and the emperor another, who doubts that we must obey the emperor and disregard the proconsul? And thus, too, if the emperor commands one thing and God another, we must obey God and disregard the emperor.' Also to Seneca, de Benefic. iii.

§ 4.

The Bull 'Unam sanctam' was expressly renewed by the fifth Lateran Council. This confirmation is adduced by Schulte in proof of the dogmatic character of the Bull (denied indeed by no one). But if he and the other opponents of Papal Infallibility make use of this Bull against the infallibility of the Pope, they must make use of it also against the infallibility of General Councils, since one of these has approved the Bull. The fact is

they no longer recognise any infallibility at all of the Church, though for long they maintained that as faithful Catholics they honoured her. What, however, the fifth Lateran Council does prove is that only the concluding sentence, on the necessity of giving due obedience to the Pope, was considered as a dogmatic decision; to this sentence alone does the Council expressly refer. Yet even this sentence is unendurable to modern opponents of the Holy See, just as it was to M. A. de Dominis, who declared it contained an intolerable error.[1] His declaration was denounced as heretical by the Cologne theologians;[2] and indeed even Gallicans[3] have long recognised that the submission due to the Pope is enjoined by the divine law.

It is true that the error of the Manichaeans that there are two principles, one good and one bad, is called heretical by the Pope in this Bull. But this is only said *by the way*—obiter et incidenter—and is no dogmatic decision;[4] which indeed was unnecessary, since the Manichaean error had been condemned long before. Similarly from the contents of the Bull we can gather confirmation of other propositions, but cannot from this infer that they are defined. The Brief 'Multiplices inter' of 10th June 1851 is no dogmatic infallible decision, because it decides no more than that the book of Vigil is to be considered condemnable and forbidden; no doctrine of the Church is affirmed in the Brief, nor are any single determinate assertions of Vigil declared heretical. [See note at end of this volume.]

[1] M. A. de Dominis, de Rep. Christ. l. iv. c. x. n. 98.

[2] Du Plessis, t. iii. P. ii. p. 227.

[3] So the Sorbonne, in 1535, 1542, 1554, 1562, and at other times, declared: 'Nec minus certum est, unum esse jure divino summum in Ecclesia Christi militante Pontificem, cui omnes Christiani parere tenentur' (Du Plessis, t. i. P. ii. p. 414; t. ii. P. i. pp. 323-327; P. ii. p. 394).

[4] What is said by the Pope obiter et incidenter deserves the highest respect, but cannot be considered as the matter of a doctrinal decision. So Canus, de loc. Theol. l. v. c. v. f. 170: 'Porro quae in Conciliorum vel Pontificum decretis vel explicandi gratia inducuntur vel ut objectioni respondeatur vel etiam obiter et in transcursu praeter institutum praecipuum, de quo erat potissimum controversia, ea non pertinent ad fidem, h. e., non sunt catholicae fidei judicia.' Bellarmin. de Cler. i. 28. Tanner, de Fide, disp. 1, qu. 4, dub. 6. Alphons. Lig. Theol. Mor. l. vi. n. 112. Merkle,

Kritik des Gutachtens des Majorität der Münchener Theol. Facultät. Dillingen, 1869, p. 18 seq. nr. 7.

§ 5.

But it is said: 'Both Boniface VIII. and Leo X. (in the fifth Lateran Council) defined that clerical immunities exist by divine law, that the clergy are free from the civil power, and that in consequence they are not bound by the laws of the State. No modern State can be reconciled with such a doctrine.'[1] But in both documents the expressions regarding these points are only incidental and subordinate propositions;[2] nor do they form in any way the subject of a dogmatic definition. Otherwise the theologians and canonists of later times would not have been able to discuss under the eyes of the Roman Curia whether and how far the clergy were subject to the laws of the State.[3] But also the words are incorrectly quoted. It is not said simply that churches and ecclesiastics are by divine law exempt from the power of laymen, but that they are so *both by divine and human law*. The term 'divine law' (jus divinum) is often used simply for ecclesiastical law—that is, for what is established by those who in virtue of divine law have authority in the Church.[4] Moreover, certain distinctions have to be made. As regards exemption from lay power in purely spiritual things, this immunity of ecclesiastics is uncontested; but as regards temporal matters it is universally admitted only in a certain sense.[5] Many theologians say that in these matters the Pope alone has immunity by divine law, while for other ecclesiastics it exists only by human law;[6] and that it is for the Pope to regulate it according to times and circumstances. A sufficient proof that all immunities are not equally founded on divine law is presented by the many differences and modifications which the Popes themselves have sanctioned at different times with regard to personal, real, and local immunities.[7] Since the officers of the Church are also citizens of the State, it is needful that the privileges due to them through the eminence of their spiritual dignity be brought into harmony with the special circumstances of each nation, and be regulated so as to cause no danger to the

civil order. These privileges have thus been frequently the subject of agreements between the Holy See and governments (concordats),[8] and in this way many limitations have been introduced.[9] What Boniface and Leo. expressed by the words 'jure divino' (by divine law), the Council of Trent[10] expresses by the words 'Dei ordinatione' (by divine ordinance); but, as is clear from the proceedings of the Council, this by no means implies that immunities are *immediately* by divine law.[11] Theologians have ever in this question placed human and civil law side by side with divine and ecclesiastical law, and have not regarded the latter as the sole source of immunities.[12]

[1] Allgemeine Zeitung, 19 June 1870.

[2] Bonif. VIII. (c. iv. Quamquam, iii. 20, de Censibus in 6): '*Cum* Ecclesiae ecclesiasticaeque personae ac res ipsarum *non solum jure humano, quin imo et divino* a saecularium personarum exactionibus sunt immunes,' &c. (prohibition to exact pedagia and the like from the clergy). Leo X., Bulla reform.: '*Cum a jure tam divino quam humano* laicis potestas nulla in ecclesiasticas personas attributa sit,' &c. (following Innocent III. c. x. de Const. i. 2). Bellarm. de Cleric. i. 28: 'Non loquitur (Bonif.) per modum definientis rem controversam, sed *simpliciter et obiter id asserit.* Ait enim: cum jure divino,' &c.

[3] Bellarm. l.c. i. xxvii. p. 161, ed. 1721: 'Non sunt exempti clerici ab obligatione legum civilium, quae non repugnant sacris canonibus vel officio clericali. Cf. Reiffenstuel, Jus Can. l. i. tit. ii. § 13 et 14, n. 290 seq. Mamachi, Orig. et Antiqu. t. iv. p. 75 seq. n. 3, p. 92, n. 4. Rigantius, Com. in Reg. Cancell. Apost. t. ii. in Reg. ix. p. 224. Pignatelli, Consult. Canon. t. vi. Consult. 86, p. 188 seq.: 'An et quatenus obligentur Ecclesiastici legibus et statutis laicorum?' n. 2, p. 189: 'Leges, quae non repugnant statui ecclesiastico et legibus canonicis, obligant Ecclesiasticos in conscientia in ordine ad communitatem civilem. Nam si Ecclesiastici non servarent has leges, inverterent debitum ordinem politicum, quippe hae leges eo ipso, quod sunt justae, sunt etiam necessariae pro conservatione communitatis cum debito ordine; Ecclesiastici autem ratione exemptionis non possunt invertere ordinem et gubernationem politicam. Praeterea qui sunt de diversa communitate, tenentur servare leges illius communitatis, ubi est res, de qua agitur, aut ubi fit contractus, ut proinde ibi sortiatur forum (c. Licet, ii. 2, de foro comp.). Quando igitur materia, de qua est lex, concernit publicum ordinem politiae civilis aut requirit consortium aliorum, tenentur Ecclesiastici servare leges, quia agitur de eo, quod est sub dispositione civili,' &c. Cf. M. Gerbert, de Leg. Eccl. Pot. l. iii. c. v. n. 3 seq. p. 452 seq.

[4] So by Innocent IV. c. ii. de Privi, l. v. 7, in 6. Cf. Gonzalez in c. iv. de Immun. n. 8. Often Old Testament precepts, which were approved and renewed, were called divine laws. M. Canus, de Locis Theol. l. vi. c. viii.

ad 5 f. 207: 'Pontifices et jurisperiti . . . . leges aliquot veteres (V. T.) probatas rursum ac denuo restitutas ab Ecclesia *divinas* vocant.'

[6] Molina, Tract. ii. de Just. et Jure, disp. 31, n. 2, 3, 11, pp. 64, 65. Concl. ii.: 'In causis mere ecclesiasticis clerici divino jure exempti sunt a civili et laica potestate.' Concl. iii.: '*Non omnis* exemptio clericorum est de jure divino'—and for this he cites St. Thomas, Cajetan, Driedo, Navarrus, Soto, and Victoria; Concl. v.: 'Ecclesiastici quoad bona sua exempti sunt a tributis non jure divino, sed humano.' Cf. Schmalzgrueber, Jus Can. lib. ii. P. i. tit. 2, § 6, n. 96 seq.; also the memorial of the theological faculty of Würzburg, of 7 July 1869, fr. iii. § 43-52.

[7] Molina, l.c. n. 7, Concl. iv.: 'Summum Pontificem arbitror jure divino esse omnino exemptum ab omni universim terrena potestate; reliquae vero personae ecclesiasticae non jure divino, sed humano videntur exemptae a saecularibus potestatibus.'

[7] As to local immunities, see Bened. XIV. Instit. eccles. Inst. 41, § 3-6; de Syn. Dioec. xiii. c. xviii. n. 13. As to real immunities, c. iv. Non minus, c. vii. Adversus, iii. 49, de Immunit.; Barbosa, de Off. et Pot. Ep. Alleg. xiii. n. 2 seq. p. 87; Phillips, Kirchenrecht, ii. § 60, p. 667 seq. As to personal immunities, Bened. XIV. de Syn. Dioec. l. ix. c. ix. n. 11; Barbosa, l.c. Alleg. xii. n. 2, 23, pp. 74, 78 seq.

[8] Civiltà Cattolica, ser. viii. vol. i. quad. 498, pp. 656, 657. Liberatore, La Chiesa e le Stato, c. iii. art. 12, § 2, p. 388 seq.

[9] Such limitations are numerous in the Concordats with Naples and Sardinia.

[10] Trid. Sess. xxv. c. xx. de Reform.

[11] When the appointment of the hierarchy was being discussed (Sess. xxiii. can. 6, de Ord.) the words 'divina ordinatione' were put instead of 'ex institutione Christi,' so as to avoid deciding the question whether it was proxime a Deo or per ipsius vicarium.

[12] Gregor. de Valentia, Comment. t. iv. disput. 9, q. 5, punct. 4, p. 2103 seq. ed. Ingolst. 1603, &c., has the following propositions: 'I. Personas clericorum *non omnino* esse exemptas a potestate saeculari quoad vim ejus directivam in legibus civilibus, quae conducunt ad bonum statum reipublicae et non repugnant ecclesiasticis canonibus aut ipsi statui clericorum. II. Quoad regimen personarum suarum directe atque adeo quoad vim coactivam, itemque quoad bona et causas politicas controversas clericos *recte* esse omnino exemptos a saeculari potestate *jure humano, ecclesiastico et civili*. III. Clericos tum quoad personas tum quoad controversias politicas et bona exemptos esse a saeculari potestate *non solum jure humano* ecclesiastico et civili, *sed etiam jure divino*.' But he admits that Francis Victoria, John Medina, Sotus, Ledesma, Palatius, Bartholomew Salon, Dominicus Bannez, and Covarruvias are against this view, and he himself maintains merely the jus mediatum. 'IV. Quoad causas quidem . . . . *mere ecclesiasticas*, cujusmodi sunt quaestiones de fide, &c., clericos *potiori multo ratione* exemptos esse a potestate saeculari non solum jure humano sed *etiam jure divino*.' Bellarm. de Cler. i. xxviii.: 'Exceptio clericorum in rebus politicis tum quoad personas tum quoad bona introducta est jure humano pariter et divino.'

§ 6.

Appeal is also made to the Bull of Paul IV., 'Cum ex apostolatus officio,' of 15th Feb. 1559,[1] to which our opponents are most eager to attach the character of a dogmatic ex-cathedrâ decision,[2] saying that if this Bull is not an universally binding doctrinal decree (on the point of the Papal authority), no single Papal decree can claim to be such.[3] But none of the exponents of dogmatic theology have as yet discovered this character in the Bull,[4] which has been universally regarded as an emanation of the spiritual penal authority, not a decision of the doctrinal authority.[5] We see the tactics of the Church's opponents have been reversed: formerly the Jansenists and lawyers of the French parliament denied that the Bull 'Unigenitus' was dogmatic, though all Catholic theologians regarded it as such; now the Janus party and jurists who protest against the Vatican Council assert that the Bull of Paul IV. is dogmatic, though all Catholic theologians deny it to be such. In truth neither the wording of this last-named Bull, nor its contents as a whole, nor the rules universally received among theologians, allow it to be regarded as a dogmatic decision. If there is to be a doctrinal decree binding on all, it is requisite that a doctrine to be held or proposition to be rejected be placed before the faithful in terms implying obligation, and be prescribed by the full authority of the Church's teaching office. This is not the case with this Bull. True enough in the *introduction* the Papal power is spoken of, and in accordance with the view of it held universally in the Middle Ages. But here, as in every other Bull, the rule already spoken of holds good, that not the introduction and the reasons alleged, but simply and only the enjoining (dispositive) portion, the decision itself, has binding force. Introductions quite similar are to be found in laws relating purely to matters of discipline, as any one may see who consults the Bullarium.[6] As to the enjoining portion of the Bull in question, it only contains penal sanctions against heresy, which unquestionably belong to disciplinary laws alone. To deduce from the introduction a doctrinal decision on the Papal

authority is simply ridiculous. This has been seen by other opponents, who have not therefore, like Janus and Huber, deduced a dogmatic definition from the Pope's introductory words, but have deduced from the enjoining portion a definition as to morals. 'For how a Catholic should behave towards heretics and heretical rulers, whether an action be theft or lawful occupation, whether one is bound in conscience to recognise a claim for succession or other legal claims,—these and similar questions must be reckoned as belonging to Christian morality even by the most milk-and-water infallibilist.'[7] Such a statement in any one who has really read the Bull leaves us little hope that he understands at all what he is speaking about. Paul IV. renews the earlier censures and penal laws, which his predecessors, acting in concert with the emperors, had issued against various heresies; he desires that they be observed everywhere, and put in force where they have been unenforced.[8] The point, then, is about the practical execution of previous penal laws, which by their nature are disciplinary, and proceed not from divine revelation, but from the ecclesiastical and civil penal authority. Besides the renewal of old there is an addition of new punishments,[9] which equally belongs to the sphere of discipline. Many sentences are entirely modelled on civil laws, *e.g.* those of Frederick II. (1220).[10] The Pope does not here speak as *teacher* (ex cathedrâ), but as the watchful *shepherd* eager to keep the wolves from the sheep,[11] and in a time when the actual or imminent falling away even of bishops and cardinals[12] demanded the greatest watchfulness and the strongest measures. The Bull of Paul IV. may be perhaps considered too severe, injudicious, and immoderate in its punishments, but it certainly cannot be considered an ex-cathedrâ doctrinal decision. No Catholic theologian has considered it as such, or placed it in a collection of dogmatic decisions; and to have done so would have only deserved ridicule; for if this Bull is to be considered as a doctrinal decision, so must every ecclesiastical penal law. Papal Infallibility, it is most true, excludes any error as to moral teaching, so that the Pope can never declare anything morally bad to be good, and *vice versâ;* but

infallibility only relates to *moral precepts*, to the *general principles* which the Pope prescribes to all Christians as a rule of conduct, not to the *application* of these principles to individual cases,[13] and thus by no means excludes the possibility of the Pope making mistakes in his government by too great severity or otherwise. His infallibility, which is his only as teacher, preserves him indeed from falsifying the doctrines of the Church as to faith and morals, but is no security that he will always rightly apply these doctrines, and never personally commit any offence against them.

[1] Lib. Sept. c. ix. de Haeret. v. 3. Raynald. a. 1559, n. 14, M. Bull. i. 840. Sentis, Lib. Septimus, v. 5, 23, p. 164.

[2] Janus, p. 405 seq. Schulte, ii. 12. The Bull was adduced in the Sorbonne, 1627-1629, as decisive for those who, like the Dominican Testefort, would reckon Papal Decretals as Holy Scripture (Du Plessis, t. ii. P. ii. pp. 248, 289).

[3] Huber, p. 47.

[4] Professor Denzinger has collected all dogmatic decisions in his Enchiridion Definitionum, which has gone since 1853 through four editions, been recommended by many bishops, and been much praised by the Holy Father. No theological reviewer in all Christendom has complained of the omission of the Bull in question; all would much rather have considered a demand for its insertion ridiculous.

[5] Dr. Fessler, p. 44. Cf. Anti-Janus, p. 168 seq. Votum on the Vatican Council, Mainz, 1871, p. 45 seq.

[6] *E.g.* Urban VIII. Const. 12, d. 7, Mart. 1624 (Bull. ed. Lux. t. v. p. 40): 'Romanus pontifex, in quo dispositione incommutabili divina providentia universalis Ecclesiae constituit principatum, auctoritatem a Christo per B. Petrum Apostolorum culmen sibi traditam intelligens, ut noxia evellat, et destruat, utiliaque plantet et aedificet,' &c. The entire Bull relates to the Constitutions of the Fratres Reformati strictioris observantiae Ordinis S. Francisci. Similarly, Const. 64 d. 6 Feb. 1626, relating to the abolition of a congregation of Franciscans (ib. p. 119, § 1).

[7] Allgemeine Zeitung, 12 April 1871, Supplement.

[8] Omnes et singulas excommunicationis, suspensionis, et interdicti ac privationis et quasvis alias sententias, censuras, et poenas .... contra haereticos aut schismaticos quomodolibet latas et promulgatas apostolica auctoritate approbamus et innovamus ac perpetuo observari et in viridi observantia, si forsan in ea non sint, reponi et esse debere, nec non quoscunque .... (haereticos cujuscunque status) censuras et poenas praedictas incurrere volumus atque decernimus.

[9] *E.g.* loss ipso facto of all offices and dignities, incapacity to hold others, confiscation of goods, &c.

[10] Frider. II. Const. a. 1220 (Walter, Fontes, pp. 84, 85, § 6):

Sit enim intestabilis, ut nec testamenti liberam habeat factionem, nec ad haereditatis successionem accedat. Nullus praeterea ei super quocumque negotio, sed ipsi alii respondere cogatur. Quod si forte judex extiterit, ejus sententia nullam obtineat firmitatem, nec causae aliquae ad ejus audientiam perferantur. Si fuerit advocatus, ejus patrocinium nullatenus admittatur. Si tabellio, instrumenta confecta per ipsum nullius penitus sint momenti.

Pauli IV. Constit. Cum ex Apostolatus officio:

Sint etiam intestabiles nec ad haereditatis successionem accedant; nullus praeterea cogatur eis super aliquo negotio respondere. Quodsi forsan judices exstiterint, eorum sententiae nullam obtineant firmitatem nec aliquae causae ad eorum audientiam deducantur; et si fuerint advocati, eorum patrocinium nullatenus recipiatur; si vero tabelliones exstiterint, instrumenta confecta per eos nullius sint penitus roboris vel momenti.

Let any one show even a single instance of a similar conformity to civil laws in a really dogmatic Bull.

[11] Paul IV. nowhere in the Bull calls himself 'doctor;' he acts 'more vigilis pastoris,' 'pro munere pastorali vulpes vineam Domini demoliri satagentes capere et lupos ab ovibus arcere' (§ 1).

[12] As Bishop Victor of Bergamo (Raynald. a. 1558, n. 20), Bishop Jacob of Nevers (ib. a. 1559, n. 13), Archbishop Bartholomew (ib. a. 1560, n. 22), the Bishop of Nantes (ib. n. 35), Cardinal Chatillon Bishop of Beauvais (ib. a. 1561, n. 86), &c. Cf. the Brief of Paul IV. against the bishops suspected of heresy, ib. a. 1559, n. 19: 'Cum sicut nuper.'

[13] Cf. Suarez, de Fide, disp. 5, § 8, n. 7. Also Schaetzler, Die Päpstliche Unfehlbarkeit, Freiburg, 1870, p. 197; and Merkle in the Augsburg Pastoralblatt, 11 Feb. 1871, pp. 47-50.

§ 7.

But it is said: 'This Bull is directed to the whole Church, is subscribed by the Cardinals, and thus has been published in the most solemn form, and is certainly ex cathedrâ.'[1] These characteristics, however, do not suffice for a dogmatic doctrinal decision. Universally binding laws as to discipline have also been subscribed by the Cardinals, and solemnly proclaimed. Even the Bull 'Cum divina' of Alexander VII. (26th March 1661), which imposed on all ecclesiastical property in Italy certain tithes to help the Venetians in their struggle against the Turks, was subscribed by the Cardinals.[2] And other Papal disciplinary laws have been issued 'out of the fulness of power' (de plenitudine potestatis);[3] the word 'define' is used in other places also of judicial judgments;[4] and laws designated as to be

in force for ever (constitutio in perpetuum valitura) have been soon afterwards repealed, because they were found to be of no service to the Church.[5] The sort of proofs our opponents bring forward in this matter show an entire ignorance of Papal Bulls.[6] Compare, for example, another Bull of the same Pope directed against the ambitious endeavours of those who coveted the Papal dignity;[7] this Bull has equally the agreement of the Cardinals, is published out of the plenitude of the Papal power, is declared to be for ever in force, threatens equally all spiritual and temporal dignitaries without exception, &c. And yet it is undoubtedly not in the least a dogmatic Bull. If it were, there would be scarcely any recent ecclesiastical laws (as opposed to dogmas) for canonists to discuss; while dogmatic theologians would have been all in strange ignorance of their province.

[1] Schulte, i. p. 34, n. 1.

[2] Bull. ed. Lux. t. vi. p. 142 seq.

[3] Cf. Bened. XI. 1304, c. iii. de Elect. i. 3. Joh. XXII. a. 1319, c. xi. de Praebend. iii. 2, in Xvagg. com. Clem. X. 1671, Const. 52. Romanus Pontifex, Bullar. ed. Lux. vi. 376 seq. Const. Creditae Nobis, 1670, ib. p. 321 (Indult for the residence of the Papal Court). Innocent XII. Const. Speculatores, 1694, § 3 (Conc. Trid. ed. Richter, p. 531). Pius IX. 26 Aug. 1852 (Acta Pii IX. vol. i. p. 376, Indult for the Congr. Lauretana), &c.

[4] Innoc. III. l. vi. ep. 90, 104, 109, 189, 202, 203, pp. 96, 111, 114, 208, 227 seq.; l. viii. ep. 60, 61, 106, 155, p. 626 seq. 675, 734, and elsewhere. Thus l. ix. ep. 88, p. 905: 'Quod est a nobis sententialiter definitum;' l. vii. ep. 29, p. 311: 'Lis ante judicem debet contestari et causa per judicem definiri.'

[5] So also the Emperor Frederic II. says of his law against the heretics (1220): 'Hoc edicto in perpetuum valituro' (Walter, Fontes, p. 84, § 6). Cf. Pius V. Const. Cum nil magis, c. un v. 14, de Monet. Tonsor. Const. 2, 3, de Ambitu, v. 10, in libro sept. Const. Romanus Pontifex, 1568 (Conc. Trid. ed. Richter, p. 502): 'De apostolicae potestatis plenitudine hac perpetua valitura constitutione.' In like manner, Alex. VII. Const. 25, In sublimi; Clem. X. Const. 21, In gravissimis (Bull. vi. 42 seq. 328 seq. ed. Luxemb.), in which for the States of the Church the revocation of exemptions from certain taxes is declared, and in numberless other Bulls.

[6] See my review of Schulte in the Archiv für Kirchenrecht, 1871. vol. xxv. p. cxxix. § 17; also Fessler, l.c. p. 82 seq.

[7] Cap. i. Cum secundum Apostolum. l. v. 10, de Ambitu in lib. vii. Decret.

§ 8.

Here should be considered another Bull of the same Pope,

'Quum quorumdam' of 7th Aug. 1555,[1] which has been even called a transformation of previous doctrine. 'Up to the year 1555,' says the *Allgemeine Zeitung*,[2] 'it was the Papal doctrine[3] that only those who persisted in holding a doctrine contrary to that of the Church, and those who having recanted again fell into the same or another heresy, were to be[4] given over to be burnt at the stake. In that year, however, Paul IV. laid down the new principle that certain doctrines, even though held for the first time and at once recanted, were forthwith to be punished with death; to wit, whoever rejected any of the decisions of the Church as to the Trinity, or denied the perpetual virginity of Mary, was to be placed on a par with relapsed heretics, and to be put to death even though he recanted.' And Schulte adds: 'The spiritual judge brought the heretic to the funeral pile, but the temporal judge gave the order to kindle it. In this way the clergy could say: "We do not pronounce the penalty of death." There is not to be found a grosser example of hypocrisy.'[5] And Huber considers that in this the temporal power was degraded, since it did hangman's duty for the spiritual power, and thus recognised its own subordination.[6]

To all this we answer: First, this Bull is certainly no ex-cathedrâ decision of the Pope in his office of teacher. There are no rational grounds for such an assertion, which much rather violates all the rules that have on such matters to be observed. The question was not about *controversies*, but about articles of faith settled long before by the Church.[7] This *penal law* may be blamed for its severity; only let it be remembered that it was published less than two years after Calvin had caused Servetus to be put to death for denying the doctrine of the Trinity; that it was held as a wholesome remedy to check the fearful progress of error, and to terrify those who led the people astray; and that it was altogether in harmony with the spirit of the sixteenth century. Secondly, the Church truly enough forbids ecclesiastics to coöperate immediately and actively in the killing of a fellow-man, even though it be done with perfect justice. She considers it unfit and unseemly that he who exercises the sacred functions of the priesthood should take part

in putting, however justly, another man to death; and the right feeling of the Christian people will ever make them take the same view. But for all this the Church has never considered that to pass sentence of death was altogether unlawful. Even for an ecclesiastic to pass a just sentence of death was in itself no guilt, no sin; only he was forbidden to do so by the Church, because this, like many other actions, was unseemly for him because of his sacred office. What ground is there here for the charge of hypocrisy?[8] Thirdly, the criminal legislation of Catholic countries, as Italy, Spain, and France, had at that time not undergone the essential alteration that occurred later. The State, from the point of view then prevailing, felt it no degradation to execute the punishment fixed by law for heretics.

[1] Bullar. Rom. ed. Coquelin. t. iv. P. i. p. 322. Sentis, l.c. c. xxii.

[2] 19 June 1870.

[3] This 'doctrine' (Lehre) is, however, to be found in no definition. Huber (p. 48) says more correctly: 'Till then it had been the *rule*' (Regel).

[4] 'Were to be' (sollten) is also given by Huber, l.c.; but Schulte, vol. i. p. 49, § 40, gives 'might be' (könnten).

[5] Schulte, vol. i. p. 50.

[6] Huber, p. 24.

[7] Huber indeed (p. 48) says that it is to this day a controversy whether the leading scholastics, as St. Thomas and others, did not hold erroneous views as to the dogma of the Trinity. But one or two learned men, with tritheistic opinions, whose bill of indictment was censured by the Church, and has attracted little attention, do not constitute a controversy, or every singular opinion of any individual would constitute one, and everything would be controverted. The dogmas as to the Trinity here cited are held by almost every sect except the Socinians and those akin to them. Denzinger, Enchir. pp. 301, 302, n. 880, brings against the Socinians only the part of the Bull containing these dogmas.

[8] Fessler, pp. 62, 63 (Eng. transl. pp. 97, 98).

§ 9.

Especial attention has been called to the Bull 'In coena Domini,' which has been styled a 'classical example of the exorbitant claims of dominion and of the intolerant fanaticism of the Papacy;'[1] and Janus says that if any Bull bears the stamp of an ex-cathedrâ decision it must surely be this one, which was confirmed again and again by so many Popes.[2] But here again

there is quite absent any doctrinal decision ex cathedrâ, for which alone the Vatican Council claims infallibility. A dogmatic doctrinal decision is unalterable and irrevocable; and precisely the history of the Bull 'In coena Domini'[3] shows how absurd is the assertion that it contains such a decision. What it does contain is a collection of the censures reserved to the Pope, and it was enlarged and altered according to times and circumstances. It originated in the fourteenth century.[4] It was revised by Martin V.,[5] Paul II.,[6] Julius II.,[7] Paul III.,[8] and their successors. Under Urban V. it contained seven cases, under Martin V. ten, under Paul III. (1536) seventeen, under Gregory XIII. (1583), twenty-one. Before Pius V. its binding force was only known by its yearly proclamation; this Pope in 1568 raised it to a permanent Church law, till any fresh determinations should be announced.[9] Urban VIII. revised it again in 1627, after which time it remained in essentials unchanged.[10] It imposes ecclesiastical penalties on all formal heretics[11] and schismatics, on apostates, on those who without permission read heretical books, on those who appeal from the Pope to a future General Council, on the falsifiers of apostolic writings, on pirates and plunderers of shipwrecked goods, on waylayers and plunderers of pilgrims; on those who imposed in their dominions new tolls and taxes in cases where neither the law nor special Papal permission allowed, or who increased the former taxes;[12] on those who with arms or other means gave support to the enemies of the Christian religion, especially the Turks; on those who did violence to bishops and ecclesiastical dignitaries, or who hindered the exportation of food and other commodities to the seat of the Roman Court, or who appealed from the spiritual courts to the civil power, issued decrees or statutes to the injury of the Church, seized on ecclesiastical property, &c.—almost all things which had already been condemned separately in previous Decretals and Bulls, and among which no one can find a dogma. The whole collection rested on the ground of the mediæval law, and so it is not to be wondered at if the Bull caused no little offence at many courts.[13] 'Whoever will judge this Bull, not after a mere cursory perusal, but by the light of

history, must confess that it is the result not of Papal ambition, but of the needs of the Church in those times, and that the [reserved] cases, far from being a burden and a molestation, were rather priceless benefits to Christendom.'[14] Formerly this Bull was published every year at Rome on Holy Thursday (in coena Domini).[15] This ceased to be done under Clement XIV. in 1770;[16] and though the Bull itself was not abrogated, it was pretty generally admitted in the present century that many of its enactments had lost their applicability.[17] Quite recently Pius IX., by the Constitution 'Apostolicae Sedis moderationi' of 12th Oct. 1869, has introduced a thorough change.[18] This Constitution, though the Janus party may call it the great Bull of excommunication, and Friedrich may see in it only a new edition of the Bull 'In coena Domini,' gives proof that the Holy See well knows how to pay due regard to changes of times and circumstances.[19] Hereby the Bull 'In coena Domini' has, like other disciplinary laws of former times, altogether lost its binding force.[20]

It has been attempted from this Constitution of Pius IX. to draw the conclusion that in Bavaria, kings, judges, and deputies by hundreds have fallen under the greater excommunication. But in this attempt there has been a total disregard of the distinctions and juridical principles which must be kept in view in judging each individual case. For the commission of a sin, whereof the absolution is reserved to the Pope, there must be in every case a mortal sin that is certain and completed in external act, and though the ignorance of the person concerned does not remove the reservation, *i.e.* does not empower the ordinary confessor to grant absolution, it prevents the censure being incurred.[21] It would be well if the domain of moral theology were let alone by those who are insufficiently acquainted with it.

[1] Huber, p. 42.

[2] Janus, p. 408.

[3] Hausmann, Geschichte der Päpstliche Reservatfälle, Regensberg, 1868, p. 89 seq.

[4] The first compilation known of was under Urban V. in 1364. Walter, Kirchenrecht, § 191, p. 346, n. 13. Hausmann, p. 95.

[5] Apud S. Antonin. Sum. Theol. p. iii. tit. 24, c. xxvii. p. 452, ed. Venet.

[6] C. iii. Et si Dominici, v. 9, de Poenit. et Remiss. in Xvagg. com.

[7] Jul. II. Const. 25, Consueverunt, 1511 (Bull. M. i. 507).

[8] Paul III. Const. 10, Bull. M. iii. t. i. p. 718.

[9] Hausmann, pp. 95-97, 101.

[10] Schulte, i. p. 40, uses the copy published by Paul V. on 8 April 1610 (Bullar. ed. Coquel. t. v. P. iii. p. 393). Reiffenstuel, in l. v. Decret. tit. 39, § 4, n. 124, t. iv. p. 549 seq. ed. Monach. 1710 seq. gives the copy published by Clement X. on 26 March 1671, 'Pastoralis Romani Pontificis vigilantia' (Bull. ed. Lux. vi. p. 341 seq.).

[11] That in consequence of this enactment and the clauses added bishops are not empowered without special license to absolve from heresy, is shown by Benedict XVI. de Syn. Dioec. l. ix. c. iv. n. 5-10; and by Liguori, Theol. Moral. l. vii. n. 82 seq., with special reference to the third proposition condemned on 24 Sept. 1665 by Alexander VII.

[12] During the whole period of the Middle Ages it was held that a king could only impose taxes on his subjects when in certain definite cases and for pressing necessities his revenues were insufficient. Cf. Raumur, Geschichte der Hohenstaufen, vol. v. p. 445. As late as 1586 this was the view of the Spanish jurist, Alphonso Alvarez Guerrerus, councillor of his Catholic Majesty; Op. cit. cap. liv. n. 20-22, pp. 711, 712. The Bull has here especially in view the levying of tolls and payments for convoy, which were used as a means of extortion (Hausmann, p. 131 seq.), and usurped by private individuals, especially by the robber-knights. Cf. Innoc. III. l. xiv. ep. 39, p. 411. So canon 40 of the synod of Würzburg in 1287 (Himmelstein, Synod. Herbipol. Würzburg, 1855, p. 59. Mansi, xxiv. 865): 'Cum imponentes et exigentes nova passagia, vel antiqua seu concessa augmentantes, singulis annis summus Pontifex *in coena Domini* anathematis vinculo denunciet subjacere, statuimus,' &c.

[13] As we see in the libellous work by Le Bret, styled Pragmatische Geschichte der so berufenen Bulle in Coena Domini, Frankfurt, 1769 seq., in four parts. On the remonstrances of courts, see Hausmann, p. 375 seq.

[14] Hausmann, p. 102, § 13. He treats the twenty cases in detail, p. 107 seq. Cf. also Historisch-polit. Blätter, 1848, vii. p. 75 seq.

[15] Similarly in the Greek Church on the Sunday of Orthodoxy (1st Sunday in Lent), a list of heresies and ecclesiastical offences punished with excommunication was given out. Cf. Schröckl, Kirchen-Geschichte seit der Reformation, vol. ix. pp. 18, 19.

[16] Hereon see Theiner, Histoire du Pontificat de Clément XIV. vol. i. pp. 480, 481, 525, 552.

[17] Because the principles on which they rested had become modified by renunciations and other valid acts on the part of the Church; or because, through causes applying to the whole community, the motive justifying them had ceased; or because it can reasonably be presumed that the lawgiver under certain circumstances permits a law to be no longer in force, as being injurious or too difficult to be carried out. See Denzinger's article, 'Ueber die dermalige Geltung der Bulla Coenae,' in the Würzburg Katholische Wochenschrift, 5 May 1855, n. 18, p. 275.

[18] No new censures are to be found in it, while many former ones are

entirely removed, viz. the censures against appropriating stranded goods, against piracy, against supplying the Saracens with weapons, and also the censure against nova pedagia et gabellas, which was so objectionable to statesmen.

[19] Cf. the words of the Constitution: 'Cum animo Nostro jam pridem revolveremus .... quasdam (ecclesiasticas censuras) etiam, *temporibus moribusque mutatis*, a fine atque causis, ob quas impositae fuerant, vel a pristina utilitate atque opportunitate excidisse.'

[20] Fessler, p. 55; English transl. pp. 87, 88.

[21] S. Lig. Theol. Mor. n. 580-582. Gury, Theol. Mor. ii. p. 550, ed. Ratisbon, 1862.

§ 10.

Similarly no difficulty is presented by other Bulls brought forward by our opponents and containing penal judgments.[1] It is easy, indeed, to style the explanations given of these Bulls 'simple Jesuitical sophistry,' 'theological vapour,' 'scholastic distinctions,' 'mere trifling,'[2] and so on—the heretics also of former times were adepts in similar racy phrases and vulgar abuse—but what has not been done and what cannot be done is to prove that these Bulls really define what our opponents would like to make out that they define.[3]

[1] Cf. Fessler, p. 42 seq.; English transl. p. 70 seq.

[2] Schulte, ii. pp. 62, 64, 66.

[3] The 'protesting Catholic's' mode of interpretation applied to civil law would force us to renounce all the careful distinctions of the Corpus Juris, in short that renowned juridical penetration which in similar cases acts exactly in a similar way to that denounced by these protesting Catholics.

§ 11.

Lastly, appeal has been made to the Schema concerning the Church in fifteen chapters and twenty-one canons laid before the Fathers of the Vatican Council, but which did not come on for discussion, much less was passed, yet caused so much stir among the representatives of the civil power. The entire project contains nothing that is new to theologians, and any one betrays great ignorance of the literature on dogmatic theology and canon law who asserts that it contains anything new and unheard of.[1] It establishes the following propositions: i. The Church is the mystic body of Christ. ii. The Christian religion can only be observed and held fast in the Church; the Church

is the external manifestation, the realisation and the expression of the Christian religion in an independent organism.[2] iii. The Church is a true society, with a determinate constitution given her by Christ, not left to human changes and revolutions; she is not part of another society nor mingled with another, but is perfect in herself, spiritual, and belonging to the supernatural order. iv. She is an external visible society and has a visible unity, so that the religious bodies separated from her in faith and in communion cannot be regarded as members or portions of her. v. She is absolutely needful for the attainment of salvation, and outside her there is no salvation. vi. She is indestructible and infallible in the preservation of the deposit of faith, the final and the highest institution (economy) for the attainment of salvation, so that no newer or fuller outpouring of the Holy Ghost is to be looked for. vii. The Church is a society with inequalities, all her members not having equal rights; in her is the distinction between clergy and laity; in her is a legislative, judicial, and executive authority, as in a complete society, which is not a simple collegium, nor subjected to the civil power. viii. This true Church of Christ is the Roman Catholic. In her St. Peter and his successors have the primacy of honour and of jurisdiction, not a simple office of superintendence and direction. ix. Through the operation of Divine Providence the Popes, for securing the independent exercise of their office, received a temporal dominion which they rightly defend. To be rejected is the heretical doctrine[3] that the union of the temporal princedom with the spiritual power is contrary to the divine law, as well as the perverse opinion that it is not within the province of the Church to decide authoritatively anything as to the relation which this temporal dominion bears to the general welfare of Christendom.[4]

[1] This is pointed out by Cardinal Antonelli in his letter to Prince Chigi, on the 19th March 1870.

[2] This has been recognised by recent thoughtful Protestants. See Ullmann, Das Wesen des Christenthums, Hamburg, 1849, pp. 122-124. Schulte (ii. p. 9), on the other hand, objects to the confusion or identification of religion with the Church. But in Catholicism religion and the Church stand to each other as abstract to concrete. Nor is there anything

'disturbing' (verwirrend) in the expression 'religio romana;' the Fathers of the Church use the expression 'religio' and 'fides romana' as well as 'religio' and 'fides Catholica,' as Schrader (de Unit. Rom. Com. l. i. p. 7 seq.) shows, giving many citations.

[3] Joh. XXII. Const. 1318, contra Fraticellos. Articuli Wicleff. damn. a. Conc. Constant. 32, 33, 36, 39, art. Hus. 13. Art. 34, 36, ex propositis a Martino V. (Denzinger, Enchir. p. 188 seq.).

[4] This is in complete harmony with the declarations of the episcopate and of the Catholic world frequently expressed since 1860. See Schrödl's Votum des Katholicismus, Freiburg, 1867.

§ 12.

Only the last three chapters and the last three canons regard the relations between Church and State. Let us first look at the canons. Here is condemned above all the assertion that the independent ecclesiastical authority, which is claimed by the Catholic Church as given her by Christ, cannot coexist with a supreme civil power, without the rights of both being injured. If this assertion were true, it would be false that we could give to Cæsar the things that are Cæsar's, and to God the things that are God's; no concord, such as has in fact often existed, could exist between the priesthood and the empire (concordia sacerdotii et imperii); there would be an antagonism between two orders coming from God, which would reflect on God Himself—a collision between the duties of a Christian and a citizen, which would make impossible the well-being of human society and would rend the unity of the individual; the disputes between the two powers would flow from their own nature, and not from the failings and misunderstandings of men. But in reality no true peace can exist if the liberty of the bride of Christ is trampled on, if the fulfilment of her mission is hindered, if earthly interests are set before eternal salvation. There is nothing in this canon which can cause offence; nor is there in the one following, which condemns those who deny that the origin of the civil power is from God, or that obedience is due to it by divine law, or who assert that this power is in opposition with natural liberty. Far from opposing the civil power, this canon takes up its defence. But just as the Church must condemn one extreme—the defectus—so must she con-

demn the other extreme—the excessus—while she maintains the true mean. Just as she cannot allow the right of the civil power to be contested, so she cannot allow that right to be exaggerated, as is done by those who deduce *all* rights existing among men from the State, and who recognise no authority that is not granted by the State. So the Church must reject the proposition that in the law of the State or in public opinion is to be found the highest rule of conscience for public and social actions; for neither public opinion, which is easily misled, nor the political law, which is often brought about by chance majorities, and may be contrary to justice,[1] can form the highest rule, which absolutely requires a divine sanction. So, too, the Church must condemn the assertion that her judgments as to lawfulness and unlawfulness do not extend to such political and social actions; for this is to misjudge her whole nature and essence, to deny her divine mission, to suppose a different code of morality to prevail for public life than for private life, and to reject the validity of the divine law. So, too, the Church must condemn the assertion that by virtue of the civil law that becomes lawful[2] which is condemned by divine or ecclesiastical law; for this is to put in unchristian fashion the law of man above and before the law of God. Never can the civil law make lawful in conscience what God and the Church forbid, *e.g.* the denial of the Christian faith demanded by heathen laws or the dissolution of a marriage valid ecclesiastically. Here the Church has to combat principles which are completely heathen.

The last canon rejects the assertion that the laws of the Church have no binding force unless they are confirmed by the sanction of the civil power, and that it belongs to the civil power to judge and to decide in matters of religion. Here the Church merely defends her own independent province against encroachments from without, and in no way herself encroaches on the province of the State. Such assertions can only be made by those who refuse to recognise any independent religious province at all.

[1] *Cf.* the speech of Von Mallinkrodt in the Prussian parliament on

Feb. 10, given by the Germania, 11 Feb. 1872; also Frhr. v. Ketteler, 1st das Gesetz das öffentliche Gewissen? Mainz, 1866.

[2] To say: 'Something is allowed (left unpunishable) by the civil law, which is declared forbidden by the law of the Church'—which is to state a *fact*—is not the same as to say: 'By virtue of the civil law that becomes allowed which is forbidden by divine or ecclesiastical law' (vi juris civilis fieri licitum, &c.)—which is to enunciate a quite false principle. Cf. Histor. Polit. Blät. vol. lxvi. pp. 38, 39.

§ 13.

In the doctrinal chapters the necessity is specially emphasised of concord between the two powers, which both, though in a different manner, are derived from God, and are of mutual advantage to each other. Then is inculcated the duty of rulers towards God and the Church, and the separation of Church and State is condemned. The right and the exercise of the civil power are set forth according to the doctrine of the Catholic Church. The civil power as well as every lawful power comes from God; all are bound to render it obedience, and no revolution is allowed; on the other hand, princes are bound to hearken to the admonitions of the Church, since they cannot have God for their father if they have not the Church for their mother.

Finally, certain particular rights of the Church are brought forward, and their violation is censured. Among such violations are the exclusion of the Church from schools, and the subjection of these to the lay power *alone;* the restriction of the liberty of the Church in the education of the clergy, and the subjection of this education to the direction of the State; the rejection and suppression of the religious orders; the hindering the Church from acquiring temporal possessions. These are matters to which the bishops on all sides have called attention, especially since 1848,[1] and as regards which the Church in no way oversteps the limits of her powers. The right of freely acquiring property must belong to the Church even if regarded simply as a society or corporation; but it belongs to her also as a gift of Christ and at all times; for she has a right to the means necessary for the fulfilment of her end, and she has it from Him, from whom she has the right of existence, as an original and legitimate power[2] implied in the duty of support-

ing her existence and permanently fulfilling her end. In regard to the actual acquisition of temporal goods she has always followed the civil laws of the particular country; but the right of acquisition in general is a right natural to her, and not originally coming from the grant of the particular State.[3]

[1] Cf. the memorial of Würzburg, Nov. 1848; that of the Bavarian episcopate, 20 Oct. 1850; that of the Archbishop of Freiburg, 1853 and 1863; and others.

[2] Syllab. prop. 26: 'Nativum ac legitimum jus acquirendi ac possidendi.'

[3] Schulte, Lehrbuch des Kirchenrechts, 2d ed. § 180, n. 1-3, p. 488 seq.

§ 14.

Thus idly our opponents seek out documents which altogether fail to prove what they wish to make them prove. They confine their attention to the Middle Ages, and to a few misinterpreted documents of quite recent times. They put away the ancient and approved rules of interpretation, and mix up general doctrines of faith and morals with particular penal judgments, principles of justice with police regulations, permanent laws with temporary orders, judicial judgments with the reasons assigned for them. And while proceeding thus they boast that science is on their side alone. Moreover they ignore all those documents which afford a confutation of their view, and to which we now will give attention.

Part III.

The Popes themselves show the Groundlessness of the Alarm raised by our Opponents.

§ 1. Papal documents ignored by our opponents. § 2. Alleged instruction of Pius VII. § 3. The Popes do not interfere in the internal affairs of nations. § 4. They well recognise the difference between mediæval and modern times. § 5. Declaration of Pius IX. on 20 July 1871. § 6. The Church limited to the purely ecclesiastical domain, and even there in many ways not free. § 7. Nominations to bishoprics and abbacies. § 8. Concessions to rulers. § 9. Concordats. § 10. Rome maintains their inviolability. § 11. Rome unchanging, yet paying due regard to changes of times and circumstances.

§ 1.

The Popes have energetically disclaimed the views attributed to them by their opponents. Thus Pius VI., in his detailed condemnation of the French 'Civil Constitution of the Clergy' of 10th March 1791, protested that he did not wish to bring all times back to the former political condition, as calumniators said, in order to make religion hated; and that he did not wish to combat new civil laws, to which, as far as they had reference to his civil government, King Louis XVI. could give his assent.[1] In the same year, Cardinal Antonelli, as prefect of the Propaganda, declared to the Irish bishops as follows: 'We must carefully distinguish between the true rights of the Apostolic See and the claims attributed to her with malicious intent by modern innovators. The Roman See has never taught that faith is not to be kept with non-Catholics, or that an oath may be violated which has been sworn to a king separated from the Catholic communion, or that the Popes may attack the civil rights and possessions of kings.'[2] In accordance with this the Irish episcopate, without being reproved, could make on 25th Jan. 1826 the declaration that the Pope as regards civil matters had no power in the British Empire.[3] In the same year the French episcopate could in the same way declare the full and independent authority of the monarch in temporal matters;[4] and the North-American bishops at the fifth Provincial Council of Baltimore in 1843 rejected the imputation that in civil and political matters they stood under the dominion of the Pope.[5] The Popes themselves have stated clearly and determinately that they had no wish whatever to attack the rights of the civil power. Pius VII., in the Allocution of 24th May 1802, in which he complains of the organic articles published in France, speaks as follows: 'May God never permit that we, or the pastors placed by Christ under our authority, should ever strive after earthly advantage, or desire to draw to ourselves what does not belong to the Church. We wish ever to have before us the divine injunction to render to Cæsar the things that are Cæsar's, and to God the things that are God's. In this we shall ever give an

example to all, and have a care that the bishops and the other labourers in the vineyard of the Lord by word and deed strive simply for the salvation of the souls intrusted to them, and be full of zeal for this end, and do not mix themselves up in matters that concern them not, which might give opportunity to the enemies of religion to calumniate its ministers. We will admonish them with all zeal, that they strictly follow the precepts of the Apostles, who are our teachers, and that not only by their preaching, but by their example, they inculcate the obedience due to the civil power, by rendering which obedience the Christians from the very outset of the Church became known as models of submission and fidelity to their superiors.'[6]

[1] Verumtamen quae de obedientia legitimis potestatibus debita asseruimus, nolumus eo accipi sensu, ut a nobis dicta fuerint animo oppugnandi novas civiles leges, quibus rex ipse praestare potuit assensum, utpote ad illius profanum regimen pertinentes, ac si per nos eo consilio allata sint, ut omnia ad pristinum civilem statum redintegrentur *juxta quorundam calumniatorum evulgatas interpretationes*, ad conflandam religioni invidiam, cum revera nos vosque ipsi id unum quaeramus atque urgeamus, ut sacra jura Ecclesiae et Apostolicae Sedis illaesa serventur (Const. 'Quod aliquantum,' 10 Mart. 1791 a. Pont. xvii.).

[2] Ami de la Religion, t. xviii. p. 198. Affre, Essai sur la Suprématie temporelle du Pape, Paris, 1829, p. 508. Also apud Döllinger, Kirche und Kirchen, p. 46; and Pichler, Gesch. der Kirchl. Trennung, ii. p. 736 seq.

[3] Affre, l.c. p. 504. Pichler, ii. p. 737. Döllinger, l.c. p. 48. Portions of the preceding declarations before the parliamentary committee of 1825 are given by Archbishop P. R. Kenrick of St. Louis, in the second appendix to his Concio in Concilio Vaticano habenda, at non habita, Neapoli, 1870 (a work theologically indeed highly unsatisfactory).

[4] Affre, l.c. p. 505. Döllinger, l.c. pp. 47, 48.

[5] Kenrick, the Primacy of the Apostolic See vindicated, Philadelphia, 1845, p. 434. Döllinger, l.c. p. 47.

[6] Bull. Rom. Contin. t. xi. pp. 335-339, n. 131. Roscovany, Monum. Cath. t. iii. pp. 529-535, n. 562, § Avertat Deus.

§ 2.

On the other hand, Janus and his defender appeal to an Instruction of Pius VII. in 1805 to the nuncio at Vienna, published by Daunou. But to appeal to written testimony without being able to prove its existence, without even taking the least trouble to refute the charge of falsification, is a proceeding which the whole scientific world recognises as disgraceful. The Cheva-

lier Artaud de Montor, the biographer and for many years the ambassador of Pius VII. and Leo XII., declared that this alleged Instruction was wholly untrustworthy, and composed or falsified by private persons.[1] It belongs, without doubt, to the spurious documents, of which Pius VII. in his Brief of 31st August 1806 to Cardinal Caprara says, that these letters are neither from him nor from his ministers. 'If his Majesty [Napoleon] has the originals he can put us to shame. We know not who can have written such foolish, false, and culpable things, and we cannot be answerable for them.'[2] No original of the Instruction was ever laid before the Pope, and Daunou could give neither the place where it was kept, nor the composer, nor the exact date. It was precisely under Napoleon I. that the falsification of Papal and in general of Roman documents, to suit all sorts of purposes, was frequently practised.[3] Other French writers,[4] filled like Daunou[5] with passionate hatred to the Papal Chair, have adopted the Napoleonic falsification, but have never confuted the objections early raised against it by Picot and others, nor met the demand to produce the originals, or at least to state where they could be found.[6]

[1] Histoire de Pie VII. t. i. c. xxxi.; t. ii. c. v. Histoire de Léon XII. t. i. c. i.

[2] Ami de la Religion, t. xxi. p. 116.

[3] *E.g.* even Pacca speaks of such falsifications, and in particular of an apocryphal Brief of the Pope, according to which Napoleon had asked the Papal approbation for the marriage law of his code (Card. Pacca, Memorie Storiche, P. ii. c. iii. p. 190, ed. Parma, 1830); also of another Brief inciting the Spaniards to the forcible expulsion of the French (ibid. P. i. c. vi. p. 69 nota).

[4] *E.g.* Origine, Progrès, et Limites de la Puissance des Papes, 1821, p. 229 (Daunou's work appeared in 1818). For other writers, see Ami de la Religion, t. xviii. p. 200; c. x. pp. 251, 298, 426.

[5] On Daunou, see Ami de la Religion, t. xxviii. pp. 1, 193, 196, 369; t. xix. p. 357; t. cv. p. 602; t. cx. p. 33.

[6] Ibid. t. xviii. l.c.; t. xix. l.c.; t. xxi. p. 116. Picot, Mémoires pour servir à l'Hist. Ecclés. du xviii Siècle, t. iii. p. 441 seq.

§ 3.

Long ago has Ferdinand Walter observed that 'the place of legitimacy and the principle of justice has been occupied (in

modern States) by actual power, and whoever knows how to seize this power, and maintain it for a certain time, is sure of the speedy recognition of the other powers. In consequence even the Roman See has had to give up interference in the internal affairs of nations for the preservation of law and justice, and has had to adopt the principle of recognising every actually existing power, as far as is needful for the good order of the ecclesiastical affairs of the country.'[1] The adoption of this principle, it should be noticed, is not very recent; for Gregory XVI., in the Bull published 7th August 1831[2] on occasion of the disputed succession in Portugal, approves and renews a number of publications by his predecessors. Among these are: (*a*) The decretals published by Clement V., where it is declared that the title by which a prince is addressed does not prejudice the rights of any other claimant, nor constitute a recognition of the former;[3] (*b*) the letter of John XXII. to Robert Bruce the ruler of Scotland, who was at war with England, and whom, owing to the doubtfulness of his right and the claims of Edward II. of England, the Pope did not at first address by the royal title;[4] (*c*) the publication of Pius II. in 1459 as to the dispute between Frederic III. and Matthias for the throne of Hungary, declaring that he simply called him king who was in possession of the kingdom, without injury to any other right;[5] (*d*) the general declaration of Sixtus IV. in the same sense;[6] (*e*) the discourse of Clement XI. in the Consistory of 14th October 1709 about the war of the Spanish succession, when the Pope spoke of Archduke Charles as the Catholic king, at which Philip V. was very indignant.[7] Gregory XVI. in the introduction of the Bull says as follows: 'The care for the Churches, which ever occupies the Roman Pontiffs in virtue of the office intrusted to them by God of guardians of the Christian flock, impels them to seek out with all diligence whatsoever over the whole earth and among all peoples brings greater advantage to the right administration of religious affairs and to the salvation of souls. But the situation of the times, the changes and revolutions in the governments and conditions of States, are such that the Popes have often been prevented from meeting

with fitting speed and liberty the spiritual needs of the nations. In particular, their authority is liable to be attacked by worldly men, on the plea that they pronounce judgment through party spirit on the rights of persons, when all they do is in cases of civil strife to enter into agreements with the actual holders of power about the ecclesiastical affairs of the country, especially about the appointment of bishops. The Popes have at almost all times combated this hostile and injurious suspicion, and have been eager to show its untruth, so that they should not be delayed or hindered in the fit measures for the salvation of souls.' After citing the Papal publications mentioned above, Gregory XVI. continues: 'As it has always been the practice and principle of the Apostolic See to take care for the fit administration of religious affairs under the conditions mentioned, without thereby implying on the part of the said See any examination or decision as to the rights of the rulers,[8] we are now especially bound in these times, when political changes and revolutions are so frequent, to avoid all appearance of at all neglecting the affairs of the Church through human considerations.' The Pope proceeds to say that in future the condition shall be considered attached to all such acts, that no injury be done thereby to the rights of the contending parties;[9] and he expressly declares that the Apostolic See was here only seeking after the things of Christ, that might more easily conduct the nations to spiritual and eternal salvation.[10] Quite in accordance with these principles was the conduct of Gregory in the time of the civil war between the Carlists and Isabellists in Spain,[11] and the conduct of Pius IX. as regards the numerous changes of government that have occurred in his pontificate, as far as they did not touch the territory of the Church, which he was bound by a special oath to defend.

[1] Walter, Kirchenrecht, bk. viii. § 343, p. 609, 11th edit.

[2] Const. 38, Sollicitudo, Bull. Rom. Cont. t. xix. pp. 38-40. Walter, Fontes, pp. 479-482. The Pope declares: 'Quod si quis a Nobis vel successoribus nostris ad spiritualis ecclesiarum fideliumque regiminis negotia componenda titulo cujuslibet dignitatis, etiam regalis, ex certa scientia, verbo, constitutione vel literis, aut legatis quoque hinc inde oratoribus nominetur, honoretur, seu quovis alio modo actuve, quo talis in eo dignitas

facto agnoscatur, aut si easdem ob causas cum iis, qui alio quocumque gubernationis genere reipublicae praesunt, tractari aut sanciri aliquid contigerit, *nullum* ex actibus, ordinationibus, et conventionibus id generis *jus iisdem attributum*, acquisitum, probatumque sit, ac *nullum adversus ceterorum jura* et privilegia ac patronatus discrimen jacturaeque et immutationis argumentum illatum censeri possit ac debeat.'

[3] Clem. c. iv. Si summus Pontifex, v. 10, de sent. excom.

[4] Cf. the two letters to the king of England. Raynald. Ann. a. 1320, n. 40-42. Robert Bruce was unwilling to receive the Papal legates, because the first letter of the Pope had not given him the royal title, but had written: 'Verum quia dissensionis negotio inter te ac praefatum regem super Scotiae regno pendente decenter non possumus tibi regii tituli nomen adscribere; prudentia tua moleste non ferat, si te regem Scotiae in eisdem literis omisimus nominare' (Pauli, Geschichte Engl. vol. iv. p. 259, n. 3). When subsequently the Pope, for the sake of peace, wrote to Robert 'sub regia intitulatione,' he expressly declared that no gain or loss should result therefrom to either of the contending parties.

[5] Pius II. ap. Raynald. a. 1459, n. 13.

[6] Sixtus IV. Const. Hac in perpetuum, Kal. Feb. a. 1475.

[7] Cf. Archiv für Kirchenrecht, 1863, vol. x. p. 185 seq.

[8] Quin illa inde pro cognoscendis decernendisve dominantium juribus sancita censeretur dispositio.

[9] Quam quidem de jurium partium incolumitate conditionem pro adjecta actibus hujusmodi habendam semper esse edicimus, decernimus, et mandamus.

[10] In hujusmodi temporum, locorum, personarumque circumstantiis ea tantum quaeri, quae Christi sunt, atque unice, veluti susceptorum consiliorum finem, ea ob oculos versari, quae ad spiritualem aeternamque populorum felicitatem facilius conducant.

[11] Archiv für Kirchenrecht, 1864, vol. xii. p. 385 seq.

§ 4.

Indeed from all the acts of the Holy See in recent times can be seen that it well knows the difference between mediæval and modern States and political relations, and that in modern times excommunication no longer has deposition as its consequence. When Pius VII., the noble-hearted victim of so many deeds of violence, solemnly excommunicated Napoleon I., the author of these deeds, he at the same time issued for the subjects of the States of the Church, as well as to all Catholic nations, a prohibition against making the excommunication a reason or pretext for doing to those laid under it any injury whatsoever, whether to their persons, property, or rights. 'For,' continues the Pope, 'while we inflict on those whom we condemn the kind

of punishment which God has placed in our power, and while we chastise the many and heavy wrongs done to God and His holy Church, we have as our main end that those who now cause us to suffer be converted and suffer with us, if God make them penitent so as to know the truth.'[1] Just in the same way Pius IX. pronounced excommunication, and nothing further, on the usurpers of the States of the Church.[2] It was known at Rome as well as elsewhere that modern States and Governments no longer recognise any civil and political consequences as attached to excommunication. Nay, more; Pius IX. declared in plain and precise words to the deputation of the Academia of the Catholic religion on 21st July 1871,[3] that of the various misrepresentations of the doctrine of Papal Infallibility, the most malicious was the assertion that in the doctrine was included the right of deposing sovereigns and releasing nations from the duty of obedience. This right, his Holiness went on to say, had at times been exercised by the Popes in extreme cases, but had nothing to do with Papal Infallibility. Its source was not the infallibility [belonging to the teaching office], but the [judicial] *authority* of the Popes. This latter, according to the public law then in force, and by the agreement of the Christian nations, who reverenced in the Pope the supreme judge of Christendom, extended to passing judgment even *civiliter* on princes and on individual States.[4] Altogether different is the present condition of affairs, and only malice can confound things and times so different.[5]

[1] Const. Quam memoranda illa, 10 Jun. 1809: 'Dum vero Ecclesiae severitatis gladium evaginare cogimur, minime tamen obliviscimur, tenere nos, licet immerentes, ejus locum in terris, qui cum etiam exserit, justitiam suam, non obliviscitur misereri. Quare subditis imprimis nostris, tum universis populis christianis in virtute sanctae obedientiae praecepimus ac jubemus, nequis iis, quos respiciunt praesentes literae, vel eorum bonis, juribus, praerogativis damnum, injuriam, praejudicium, aut nocumentum aliquod earumdem literarum occasione aut praetextu praesumat afferre. Nos enim in ipsos eo poenarum genere, quod Deus in potestate nostra constituit, animadvertentes atque tot tamque graves injurias Deo ejusque Ecclesiae sanctae illatas ulciscentes, id potissimum proponimus nobis, ut, qui nos modo exercent, convertantur et nobiscum exerceantur (S. Aug. in Ps. liv. n. 1), si forte Deus det illis poenitentiam ad cognoscendam veritatem (2 Tim. ii. 25).'

[2] Encycl. Cum Catholica Ecclesia, 26 Mart. 1860; Respicientes, 1 Nov. 1870.

[3] Given in the Voce della Verità, N. 85, d.d. Rome, 22 July 1871, then in the Civiltà Cattolica, 19 Aug. quad. 508 (ser. viii. vol. iii.), p. 485. Translated into German in the Munich Pastoralblatt, 1871, No. 31; also Archiv für Kath. Kirchenrecht, vol. xxvi. No. 5, p. lxxx.; and Periodische Blätter über das Vatican. Concil. vol. iii. No. 8, pp. 327, 328. The same view is expressed in the memorial of the opposition bishops given by Schulte (i. p. 5) and Friedrich (Doc. ii. p. 389).

[4] The report in the Civiltà Cattolica of this last sentence is: 'Questa [l'autorità pontificia] secondo il diritto pubblico allora vigente, e per l'accordo delle nazioni cristiane, che nel Papa reverivano il supremo giudice della cristianità, stendersi a giudicare anche civilmente dei Principi e dei singoli Stati.' This or a similar version has been followed by Dr. Hergenröther, and by the French translator of Fessler's True and False Infallibility (English transl. p. 128, note). A different version is given in the Discorsi del Sommo Pontifice Pio IX. Roma, 1872, p. 203: 'L'esercizio, poi, diquesto diritto, in quei secoli di fede che respettavano nel Papa quel che è, vale a dire Il Giudice Supremo della Christianità, e riconoscevano i vantaggi del suo *Tribunale* nelle grandi contese dei Popoli et dei Sovrani, liberamente si estendeva (aiutato anche, com'era dovere, dal Diritto Pubblico e dal commune consenso dei Popoli) ai piu gravi interessi degli Stati e dei loro Reggitori.' [Tr.]

[5] The Pope continues (I borrow the translation given by the English translator of Fessler, l.c.): 'As if an infallible judgment delivered upon some revealed truth had any analogy with a prerogative which the Popes, solicited by the desire of the people, have had to exercise when the public weal demanded it.' In the Civiltà Cattolica, l.c.: 'Quasi che l'infallibile giudizio intorno ad un principio di rivelazione abbia alcuna affinità con un diritto che i Papi, chiamati dal voto dei popoli, dovettero esercitare quando il comun bene lo domandava.' In the version given in the 'Discorsi' above named this passage is absent. [Tr.]

§ 5.

This declaration is clear and simple. It teaches: *First*, that the source of that former right of deposing was not the infallible teaching office, but the judicial authority of the Popes. Deposition was a punishment; to pronounce punishments is the province of the judicial power; and only in virtue of such power have the Popes acted in these cases. *Secondly*, that the ground of the just exercise of this judicial power lay in the public law of those times, which recognised in the Pope the highest judge of princes and peoples, a recognition in some sense the result of the desire of self-preservation against the threatening barbarous rule of brute force. *Thirdly*, that a renewal of the religious and political relations of those former times is not to be thought of.

The unity of the Christian family of nations has been destroyed, and governments only decide their disputes by arms; it is no longer easy, as formerly, for princes to be tyrants; they are restrained by democratic elements, by constitutions and representative assemblies; the reverence attached to monarchy has to a great extent disappeared, and the Church is far from desiring to diminish the little that remains. No one, least of all the Pope, thinks of resuscitating the old deposing power.[1] It is only the Revolution which threatens sovereigns, precisely that new power which no one by word and deed has more condemned than the Pope has.[2] Of the many princes dethroned in the last eighty years, not one has been dethroned by the Pope, but all by the Revolution, all by principles unceasingly combated by the Holy See.

[1] Cf. Civiltà Cattolica, ser. viii. vol. iv. quad. 511, pp. 12-16.
[2] Syllabus, prop. 63.

§ 6.

Thus in these days the Church is confined to the purely ecclesiastical domain, and her whole endeavour must be directed to preserve here her necessary freedom, or if she does not possess it, to win it back. In most countries, far from possessing this freedom, she is loaded with a heavy yoke, and instead of being able to exercise indirect influence on earthly affairs by instructing and elevating men, she is in many ways fettered and oppressed by the 'jus potestatis civilis in or circa sacra' (the 'right' of the civil power in religious matters), partly positive, partly negative, partly indirect, partly even direct. More and more she is driven away from public life, and confined within the four walls of places of worship. Even here she is watched with Argus eyes, subject to the espionage of the police, and threatened with punishment for occasionally venturing on some freedom of expression. Robbed to a great extent of her former well-earned property, deprived of a number of influential institutions, exposed without protection to the mockery of an unbridled press, suspected by the mighty ones of the earth under numberless pretences, and accused of cherishing vast schemes of dominion, she seems to be

on the way back to the times before Constantine the Great. Yet even in those times she was in one way better off; for while externally persecuted she was free internally, her teaching and discipline were subjected to no State approval, and she freely chose her officers and ministers without State interference.

§ 7.

Very strange is the charge made in several quarters against the Popes, that they who in the struggle about investitures had so energetically fought for the freedom of the Church, 'themselves gave up again the rights of the Church to the civil rulers, to whom they finally conceded the nomination to bishoprics and abbacies—a greater concession than the right of investiture.'[1] But we must carefully distinguish different times, circumstances, and persons. These concessions were derived from a time when the civil power had acquired a *de facto* supremacy over the Church; and the latter, to avoid worse evils, was compelled as far as she could to yield to the menacing demands of the princes. The concessions were at first very limited and of various characters, being more extensive in the case of churches and prelacies that were newly erected and endowed by the princes; and less extensive in the case of those that were older and long in existence.[2] As late as the time of Gregory XIII. (1577) three kinds of privileges in these matters conceded to different sovereigns were considered distinct at Rome: (1) the right of presentation in virtue of a legitimate right of patronage; (2) the right of nomination in virtue of an apostolic privilege; and (3) simple right of supplication.[3] At that time also there were many churches, without as well as within Germany, possessing free right of election; in many others the civil ruler recommended to the Pope ecclesiastics who seemed fit, and the Pope as far as possible paid regard to this recommendation.[4] But the courts of Europe soon sought to set aside all limits, and to convert the right of supplication into that of nomination and presentation.

The kings of Portugal had an extensive right of patronage in their transmarine dominions, but in Europe, excepting the

see of Lisbon and two bishoprics, only the right of supplication, until in 1740 Benedict XIV. conceded to them the complete right of nomination.[5] The Papal reservation of vacancies in curia was formerly only set aside for individual cases by special Papal indult.[6] Also in Poland the kings had rights of supplication and of presentation, except as to vacancies in curia; as late as 1713, on occasion of such a vacancy, Clement XI. filled up the archbishopric of Lemberg.[7] The concessions made in 1451 to the Duke of Savoy were likewise understood at Rome only in the sense of a right of supplication, and as limited to the duchy; but Benedict XIII. conceded the right of nomination, extending it to all the possessions of the duke, even the island of Sardinia; and Benedict XIV. and Pius VII. made further concessions.[8] The Spanish kings had in the fifteenth century partly rights of supplication, partly of presentation; rights which were considerably extended by Hadrian VI., Clement VII., and Paul III.; but it was not till 1753 that they acquired by the Concordat with Benedict XIV. the general right of patronage.[9] The kings of Hungary had an extended right of patronage;[10] the emperors had by special Papal Indults a right of nomination to the bishoprics of the German-Austrian territories.[11] In the kingdom of the Two Sicilies the privileges of the kings as to bishoprics were first only granted for the lifetime of the monarchs, and were not everywhere equal;[12] but after the Concordat of 1818 a lasting Indult was granted for all churches.[13] The Duke of Milan and the Republic of Venice had received in the sixteenth century Indults granting the right of nomination for individual churches;[14] further concessions were made to Venice in the eighteenth century.[15] Not till 1754 did the senate of Lucca obtain the right of nominating the archbishop of their city.[16] In the year 1559 Philip II. received from Paul IV. the right of nomination for the bishoprics of the Netherlands;[17] while Charles V. had as early as 1515 received an Indult, often afterwards confirmed, that without his consent no abbots or conventual superiors were to be appointed.[18] In France, in virtue of the Concordat between Leo X. and Francis I., the king had a very extended right of nomination

in the old provinces. The attempt (after 1532) to extend this to Brittany[19] was resisted by Paul III.[20] But the kings, especially Louis XIV., managed to obtain special Indults for all the newly acquired provinces as well as for all the bishoprics not yet in their nomination ;[21] so in 1664 for Metz, Toul, and Verdun ; in 1668 for Arras and Tournay ; in 1678 for the archbishopric of Alby ;[22] in 1695 for the archbishopric of Cambray ;[23] and lastly, on 14th March 1770, from Clement XIV. for the island of Corsica.[24] Up till 2d Jan. 1765 the sees vacant by a natural death in curia were reserved to the Pope ;[25] but then even this reservation was given up in favour of the king.[26]

By looking at each of these documents one after the other can be seen how much and how long the Popes resisted the invasions of the various courts, and yet how at last they were always compelled to make fresh concessions, while the influence of the civil ruler continually increased. The Popes themselves felt how much the liberty of the Church in this way was weakened. Pius V. confirmed and proclaimed on 19th Jan. 1566 the resolution passed by the Cardinals in conclave that rights of presentation and nomination to bishoprics and consistorial benefices should in future only be granted with the consent of two-thirds of the Cardinals ;[27] he even recalled, on account of grave misuse thereof, a privilege granted to the Duke of Mantua. But the force of circumstances was too strong ; many new concessions had to be granted ; and all the Popes could do was to admonish the princes to make a fitting use of these privileges, and to guard and regulate the investigation of candidates so as to prevent the elevation to prelacies of those who were altogether unfit.[29]

In the present century the Bavarian Concordat in the original ninth article gave the king the right of nomination for the sees of Munich, Ratisbon, and Würzburg, and as to the other sees ordered the chapters to propose four fitting ecclesiastical persons to the king. But the Bavarian Government, 7th Sept. 1817, demanded (according to the draft of 1807) the direct royal nomination to all the bishoprics ; and the Holy See felt itself obliged to yield so as not to cause the ruin of the reorganisation

of the Church in Bavaria.[30] These facts are certainly sufficient to show the groundlessness of the reproach made against the Apostolic See of having 'surrendered the rights of the Church to the civil rulers,' a reproach which sounds strangely in the mouths of those who are so zealous for the right and the might of the State. It is neither just nor worthy of historical science to make a burdensome necessity imposed from without a matter of reproach to the person who suffers under it, and to mix up in confusion times quite different from each other.

[1] Huber, p. 3.

[2] Cf. Chr. Lupus. Diss. de regia Antistitum Nominatione, Opp. t. iv. p. 115 seq.

[3] Rigantius, in Regul. Cancell. apost. Romae, 1744, t. i. p. 208, in Reg. ii. § 1, n. 12.

[4] Eugen. IV. ap. Raynald. a. 1440, n. 2: 'Supplicant nobis reges Franciae, Angliae et Hispaniae ceterique pro praelatorum promotionibus nobisque commendant, quos utiles et idoneos credunt. Nos exaudimus, quantum cum Domino possumus et honore nostro preces eorum. Ubi vero aliter videtur nobis pro commodo et bono regimine ecclesiarum, reges et principes acquiescunt.'

[5] Rigantius, l.c. n. 124-127, p. 227. Fargna, Com. de Jure Patronatus, t. iii. p. 312, p. iv. c. xiv. xv.

[6] Rigantius, l.c. in Reg. i. § 1, n. 296, p. 81.

[7] Ibid. in Reg. ii. § 1, n. 121, in Reg. i. § 1, n. 297, 298, p. 81.

[8] Ibid. in Reg. ii. § 1, n. 39 seq. 46 seq. p. 211 seq. 214, 215. Carutti, Storia di Vittorio Amadeo II. c. xii. p. 179. Bened. XIV. Bull. t. ii. p. 243, Const. 23 Dec. 1748. Pius VII. Const. 23 Jul. 1819, Bull. Rom. Const. t. xv. p. 228 seq. Cf. also the document of 5 March 1816, apud Theiner, Sammlung, p. 19 seq.

[9] Pirrus, de Elect. praesulum, § 10, p. 58 (Graev. Thes. ant. t. ii.). Mariana, de Reb. Hisp. l. xxvi. c. ii. Archiv für Kath. Kirchenrecht, vol. x. p. 8 seq. xi. p. 257.

[10] Rigantius, in Reg. ii. Canc. § 1, n. 72, p. 185.

[11] Ibid. n. 78, 79, p. 220. Constit. Pii VI. et VII. Bull. Rom. Cont. t. vi. p. 414; t. viii. p. 132; t. xiv. p. 389; t. xv. pp. 249, 429, 573.

[12] Rigantius, l.c. p. 208 seq. n. 12 seq. Vivianus, de Jure Patron. l. iii. c. i. n. 38 seq.

[13] Bull. Rom. Cont. t. xv. pp. 7, 15. Münch, Concordate, i. 721.

[14] Rigantius, l.c. p. 210, n. 23, 25, 27, 28.

[15] Bull. t. iv. ed. Romae, 1762, pp. 20-25, 49, 50.

[16] Ibid. pp. 91, 92. Roscovány, Mon. i. pp. 272-274. Properly the senate had to propose three ecclesiastics for this metropolitan see.

[17] Raynald. a. 1559, n. 33. Rigantius, l.c. n. 116, p. 226.

[18] Pinson, Traité des Régales, t. ii. p. 1140. Rigantius, l.c. p. 242, n. 85.

[19] Cf. in general Thomassin, P. ii. l. i. c. xlv. xlvi.

[20] Rigantius, in Reg. ix. Proom. t. ii. p. 4, n. 6 seq.; P. i. § 3, n. 274 seq. p. 111.

[21] Rigantius, in Reg. ii. § 1, p. 220 seq. 224 seq. Reg. ix. P. i. § 3, p. 102.

[22] Bull. Rom. ed. Romae, 1767, t. vi. P. vi. pp. 45, 248, 282; viii. p. 61.

[23] Rigantius, in Reg. ix. P. i. § 3, n. 208, t. ii. p. 102.

[24] Bull. Rom. Contin. t. iv. pp. 144, 146.

[25] Rigant. in Reg. i. § 1, n. 203, 204.

[26] Bull. Rom. Cont. t. iii. pp. 34, 35.

[27] Const. 4, Pro debito justitiae, Bull. ed. Taur. vii. pp. 427, 428.

[28] Rigantius, t. i. p. 211, n. 33.

[29] Greg. XIV. Const. Onus apostolicae, 1591. Clem. VIII. Const. Magna dona, 1599. Urban VIII. Inst. a. 1627 (Bullar. ed. Taur. t. ix. 419; x. 478; xiii. 581 seq.). Bened. XIV. Const. Gravissimum, 18 Jan. 1757.

[30] Concordat und Constitutionseid der Katholiken in Bayern, Augsburg, 1847, pp. 70, 87-89. Cf. p. 31.

§ 8.

The Popes have more and more surrendered in favour of the civil rulers, and also of the bishops, their rights of collation, which were made the subject of many exaggerated and unjust complaints. Yet in the time of the Council of Constance, and at the Council itself, it was recognised that the Popes in their nomination to benefices had always paid the greatest regard to the claims of learning.[1] The complaint made nowadays that men of learning are excluded, especially in Germany, from the episcopate, cannot be laid to the charge of the Pope, who has the free disposal of not one single German bishopric, but must confirm the candidate nominated or elected, unless there be any impediment in regard to his faith and morals. As a fact it was for some time a maxim at one of the German courts to raise to the episcopate no learned theologian or canonist, and elsewhere learned men have frequently been struck off the list of candidates.

The concessions mentioned above have brought advantage in strengthening the monarchical power and facilitating agreement between Church and State; but they have also brought disadvantages. Certainly in recent Concordats the Church has given up more than she has gained, if we do not regard the en-

dowments of bishoprics and chapters; and even these are a small compensation for the Church property secularised since 1803. Most oppressive has she found the great privileges of the civil princes as to the nomination of bishops,[2] and the civil veto in their election.

[1] Hefele, Conc. vii. pp. 123, 234, 317.

[2] On the French Concordat of 1516 and 1517 Charles du Plessis d'Argentré remarks (t. i. P. ii. p. 357): 'Extraordinaria dispensatio (qua ad Regem translata est Episcoporum electio) non in perpetuum durare debet, si libertatem Ecclesiae et splendorem imminuat.' As early as 1560, when there was the question of summoning the Council of Trent, the Faculty of Paris declared in its Postulate: 'Nominationes Regis sunt occasioni ruinae ecclesiasticae' (ib. t. ii. P. ii. p. 290).

§ 9.

It has also been asserted that, according to the doctrine prevailing at Rome, Concordats are not real contracts, but grants of the Pope — privileges, whose continuance depends on his good pleasure. Yet the Popes conclude such agreements with the civil power in the form of a contract,[1] establish complete reciprocity and obligation on successors of both parties,[2] declare that they will not violate nor change the said agreements,[3] and even designate their violation as a formal breach of contract.[4] It cannot, then, be doubted that the Popes regard them as real contracts; and this is the real point, not what this or that individual canonist may teach. But even those canonists who call Concordats privileges do not teach that their continuance depends on the good pleasure of the Pope, but that they are privilegia ex causa onerosa which cannot be set aside by one of the parties.[5] Opposed to them are canonists of high repute, even in the Papal Court.[6] The view that Concordats are privileges has also been held by German canonists without arousing complaint, or causing injury to the Concordats with the German nation. Thus, *e. g.* Schmalzgrueber[7] says of the Concordats with the German nation, that the Pope in the plenitude of his power can act contrary to them,[8] since the tacit condition is always to be understood: 'provided there does not arise an extraordinary reason in virtue of which the welfare of the Church demands another course;' for Concordats, though having some-

what the force of a contract (aliquam vim pacti), are much rather privileges granted by the Pope, as may be inferred from the fact that spiritual matters cannot fall under a contract properly so called, and that the Pope in *these* contracts has rather surrendered or imparted some portion of his own rights than acquired any fresh right.[9] It is universally admitted that things purely spiritual cannot be the object of a contract,[10] and that in them the Pope alone is competent; but Concordats as a rule refer not to things purely spiritual, but mostly to things mixed; some writers, indeed, make the latter an essential feature.[11] The former class of Concordats treated of collation to benefices, and contained an express limitation. Recent Concordats, from the year 1801, are in many points different from earlier ones. Truly enough privileges and favours granted by the Church are to be found in them, for example, the nomination of bishops, dignitaries, and canons granted to the temporal sovereign. Still these Concordats, as to their entire substance and also as to their form, are by no means simply privileges.

It is idle to cite the Brief of Pius IX. to Maurice de Bonald, 19th June 1871, which neither intends to give nor does give a decision on the nature of Concordats. Here they are called 'Contracts or Indults' (pacta seu indulta); the latter in so far as the Church by these agreements (per haec conventa) does not endeavour to obtain a cession of rights, but makes a grant from her own, and thus founds special rights different from those according to common law (jus commune). The Brief praised the author of a work defending the principles of the Church,[12] and discussing two questions: whether the government of National Defence had succeeded to the privilege granted by the Concordat of 1801 of presenting to vacant sees; and if so, whether this privilege, in consequence of the abuse made of it during seventy years, could be recalled.[13] Here the question is primarily about an Indult in the full sense of the word, as the Indult of presentation or nomination.

In general all are agreed that where, in consequence of altered circumstances, a Concordat is injurious and the needs of the Church require an alteration, the Pope can alter it, and act

in opposition to it. Quite a similar claim is made by jurists for the civil power.[14] Such cases, however, are exceptional, and do not justify a goundless and arbitrary revocation. Also Concordats are in no case mere draft agreements (Punktationen), a simple expression of identity of views, receiving their binding force only from the civil power, and for so long only as the civil power pleases.[15]

[1] Schulte, Kirchenrecht, i. p. 441 seq. argues from the form.

[2] Bavarian Concordat, 1817, art. 17, 18. Neapolitan, 1818, art. 30. Austrian, 1855, art. 35. Spanish, 11 Jan. 1753 (Münch, i. p. 461). In the French Concordat of 1516 it is expressly said: 'Illam (Concordiam) contractus et obligationis .... vim et robur obtinere' (Münch, i. p. 244).

[3] 'Paulus V. Const. Ex pastoralis declarat, nec suae unquam mentis fuisse nec praedecessoris sui concordatis derogare. Et jam antea Gregorius XIII. Const. 6 Junii 1572, edita contestatus est, se, sub quacumque forma scripserit concordata noluisse laedere.' Bouix, de Princip. Jur. Can. P. i. sect. iii. c. i. § 3, ex Bineri Apparatu Jurisprud. Canon. P. vi. c. iii. a. 8, § 6. And before this, Jul. III. in Breri ap. Raynald. a. 1554, n. 19: 'Nos attendentes, Concordata praefata vim pacti inter partes habere, et quae ex pacto constant, absque partium consensu abrogari non consuevisse neque debere,' &c. Cf. Urban VIII. apud Lacroix, de Benefic. Eccl. n. 519.

[4] Pius IX. Allocution of 1 Nov. 1850 and 22 Jan. 1855, as to Sardinia (Acta Pii IX. vol. i. p. 254, vol. ii. p. 5); of 17 Dec. 1860, as to Baden. Cf. Syllabus, prop. 43.

[5] Pignatelli, t. ix. Cons. 58, p. 109, n. 3: 'Privilegium ex causa onerosa .... non potest a principe revocari .... Censetur hoc casu orta *mutua obligatio* ex consensu utriusque partis, quae altera renuente et invita tolli non potest.' N. 4: 'Contractum a principe initum, *etiam cum subditis*, esse *irrevocabilem*, probat textus in c. i. Ex epistolae (ii. 19) de probat. atque communis opinio .... Quod adeo verum est, ut *nec etiam de plenitudine potestatis* posset Imperator vel Papa contravenire contractui.' N. 5: 'Et idem juris est in successore, qui nec ipse potest resilire a contractu per praedecessorem inito, etiam de plenitudine potestatis, ut scripsit Paulus de Castro in d. l. Digna vox 4 Cod. (i. 14) de leg. ....' N. 7: 'Nihil est, quod lumine clariori praefulgeat, quam recta fides in principe. Si esset in sola principis voluntate, contractum, quem cum subdito facit, infringere, nullus verisimiliter contraheret cum ipso et sic hominum commercio careret in contrahendo. Esset autem absurdum, ut qui princeps est hominum, careret commercio hominum. Inter majores enim poenas revocatur, inter homines esse et hominum carere commercio, l. iii. cod. i. 7, de apost. Princeps, *etiam Imperator ac Papa*, contrahendo obligatur, *jure naturali*, a quo surgit aequitas obligationis, l. i. Dig. (ii. 14) de pactis. Quod autem habet subsistentiam a jure naturali, a principe tolli non potest, l. fin. (6) Cod. (i. 22) si contra jus vel utilitatem publicam. Iderque princeps obligatur ex contractu ratione consensus, qui est *de jure naturali*,

cui etiam Imperator et Papa subjiciuntur clem. (2) Pastoralis (ii. 11) de re judic.'

[6] P. Nilles, in the Archiv für Kirchenrecht, vol. x. p. 452, n. 1. Cf. Reiffenstuel in l. iii. Decret. tit. 5, § 17-19; especially n. 534 seq. Engel, Coll. Jur. Can. l. iii. tit. 5, n. 54. Schlör, Diss. ad Conc. Germ. in Thes. Jur. Eccl. i. p. 319 seq. Ferraris, Prompta Bibl. Can. Rom. 1844, v. Beneficium, t. i. p. 639 seq. Card. Soglia, Inst. Jur. Publ. Eccles. 1844, p. 135: 'Concordata rationem non habent privilegii, sed pacti, estque illud pactum non temporarium et personale, sed reale et perpetuum, quod religiose observandum est.' Rigantius, Com. in Regul. Cancell. apost. in Reg. ix. P. i. § 3, n. 165, t. ii. p. 98: 'Quin imo posse Papam Concordatis derogare, cum ex ipsius parte contineant meram gratiam, tradunt Kochier ad hanc Reg. Gloss. 11, n. 22. Branden, ad Concordata Germ. q. 8. Simonet. de Reservat. quaest. i. n. 5; q. 99, n. 23, 26. Rota Decis. 266 part. 3 et Dec. 114, n. 2 et seq. p. 6. Recent. n. 166: 'Verum sine justa, gravi, et rationabili causa Concordatis derogare nec consuevit nec debet.' Santarell. Resolut. 18, n. 17. Gonzales, Gloss. 28, n. 26. Pirrhing, in Jus Canon. l. iii. tit. 5, n. 366. Mutta, de Caus. Consistor. sect. 18, n. 23. De Sanctis, Exam. Consist. cap. xviii. n. 18. After citing the words of Julius III. Riganti goes on to say: 'Hinc per clausulas generales, etsi amplissimas, in Pontificiis constitutionibus contentas *nunquam* censetur derogatum Concordatis quoad illas ecclesias, quae sub illis continentur *per viam comprehensionis*, ut sunt fere omnes ecclesiae Nationis Germanicae, cum qua inita fuerunt et quarum respectu Concordata ipsa *vim pacti et conventionis habent*, ad differentiam illarum ecclesiarum, quae sub Concordatis continentur *per viam extensionis*.

[7] Jus Canon. l. iii. t. i. tit. 5, § 6, n. 271 seq. p. 206 seq. ed. Ingolst. 1726, 4.

[8] But the question here is as to benefices, about which in the Concordat itself there is the limitation: 'Nisi ex rationabili et evidenti causa . . . . de digniori et utiliori persona duxerimus providendum.'

[9] P. 207: 'Ratio est, tum quia spiritualia sub contractum proprie dictum et commercium non veniunt, tam quia per haec Concordata Papa de jure suo potius aliquid remisit vel communicavit, quam acquisivit.'

[10] Rota Dec. 266 in causa Leod. 15 Mart. 1610: 'Quia spiritualia non cadunt in commercium.'

[11] *E.g.* Moroni, Dizionario V. Concordato, t. xvi. p. 35: 'Concordato communemente si chiama una convenzione conchiusa *intorno ad oggetti disciplinari misti* fra la potestà ecclesiastica e civile, rappresentata la prima dal sommo Pontefice, la seconda dall' imperatore, re, principe, sovrano, republica o corpo qualunque investito dell' autorità sovrana. . . . Come convenzione fra i due poteri, il concordato verte necessariamente *in oggetti disciplinari misti, ecclesiastico-civili*, non potendo entrambi convenire che su cose, in cui ciascuno abbia un interesse.'

[12] Deux Questions sur le Concordat de 1801, par M. de Bonald. In a letter to the author, 30 Nov. 1871 (La Fede e la Scienza, 20 Feb. 1872, pp. 232-238), Tarquini has worked out his theory clearly.

[13] Cf. the work Die ministerielle Antwort auf die Herz'sche Interpel-

lation, Regensburg, 1872 p. 224 seq. Münchener Pastoralblatt, 1871, N. 49. Archiv für Kath. Kirchenrecht, xxvii. p. li. seq.

[14] They insist on the inalienability of the State rights of supremacy (Hoheitsrechte, prerogatives) exactly as the canonists insist on the inalienability of the Papal jurisdiction over the whole Church. The often cited proposition: Papa non potest ligare sibi manus—on which Branden says (super Conc. inter Sed. Ap. et inclyt. Nat. Germ. collect. q. 8, col. 1620): 'Et facultatem jure divino Pontifici competentem Papa a se abdicare non potest, quamquam Papatui renunciare valeat'—has only the meaning that the Pope in certain eventualities, in case the higher good of the Church requires it, can make use of the plenitude of his power. The question here is not as to the ordinary course of things, but only as to extraordinary circumstances, on which vide supra, p. i. § 2.

[15] As further references on the question of Concordats can be given: Phillips, Kirchenrecht, iii. § 158, p. 656 seq. Schulte, Kirchenrecht, i. 455 seq. Liberatore, La Chiesa e lo Stato, c. iii. art. 10, p. 358 seq. Tarquini, Institutiones Juris Eccles. p. 83 seq. The difficulty of fixing the juridical character of Concordats was recognised as early as the 17th century. See Rebuff. Tract. Concord. quae inter SS. D.N.P. Leonem X. ac Christ. D.N. Regem Franc. sunt edita, Colon. 1610, p. 902.

§ 10.

Groundless is the charge made against the Holy See of placing itself above all contracts, claiming the right to arbitrarily annul them, and treating the State quite as an inferior. The Holy See has much rather ever held fast conscientiously to these Concordats. In the negotiations with the Sardinian Government of 1850, Cardinal Antonelli repeatedly urged that the fidelity promised *on both sides* was a most solemn guarantee for the engagements entered into, and that neither of the two parties could get free from the obligation without the consent of the other.[1] He expressly gave to Concordats the character of those contracts (treaties) which are called international.[2] In a circular to the Nuncios, he recognised the obligation of both parties, which sprang from the solemn and mutual promise, and which was as great as the obligation springing from other treaties of a public kind, such as are made between different governments.[3]

In the Allocution of 1st Nov. 1850, Pius IX. complained of the statement of the Sardinian ministry, that Concordats relating to ecclesiastical immunities could be declared null, and abolished by the civil power alone, without the consent, or even in spite of the opposition, of the Apostolic See.[4] From this

Allocution, as well as from that of 17th Dec. 1860, relating to the abolition in Baden of the agreement without the consent of the other party, is taken the 43d proposition of the Syllabus.

It is also not true that Rome has 'cancelled' the Concordat for Alsace and Lorraine. She has only declared that it is no longer applicable to them, because they have been separated from France, and the Concordat was only concluded with the French Government for French territory. This declaration cannot be assailed either logically or juridically. Nor is there any renewal of mediæval claims in the demand, that laws as to the Church and ecclesiastical affairs be not passed solely and simply by the civil legislators without even consulting the functionaries of the Church; for more regard is paid when the rights and interests of a mere commercial company are being treated of. There is no presumption in the declaration of the Holy See, that it 'can never admit the right of the civil government to pass laws on the affairs of the Church, and thereby limit the rights of the Church and the sphere of the ecclesiastical authority's competence. In virtue of her divine appointment the Church is completely free and independent of the State; if contests arise as to the exercise of her rights, she cannot allow the civil rulers to decide thereon without the coöperation of the ecclesiastic authority.'[5] Which of two powers is seeking to tyrannise over the other, the one which proposes a friendly arrangement and holds as sacred the treaties agreed on, or the one which refuses all arrangement, and desires itself alone to regulate all, both spiritual and temporal? The one which desires to preserve and protect what yet remains to it, or the one which desires to seize on what it never has had, nor can have, a right to? The one which defends itself with ancient principles of law, or the one which seeks under various pretexts to create a new condition of affairs, so as to destroy entirely the ancient law, and which misinterprets historical events long past, so as to dress up an accusation of aggression, and then proceeds to measures of extremest violence?

[1] Acta Pii IX. vol. ii. p. 141.
[2] Ibid. p. 165.

[3] Ibid. p. 184. The president of the Sardinian ministry, D'Azeglio, declared (5 June and 29 July 1850) that Concordats were not to be placed on the same line as public treaties between two civil governments; that their inviolability was not absolute, if only through the condition to every contract: rebus sic stantibus (which comes at last to Spinoza's blunt statement, Tract. Theol. Polit. c. iii.: 'Foedus tamdiu fixum manet, quamdiu causa foederis pangendi, nempe metus damni seu lucri spes in medio est;' Hübler, l.c. iii. p. 435, n. 97), and that complete changes in the State, as was the case with Piedmont, often demanded a deviation from what had been agreed. See Acta Pii IX. vol. ii. p. 158 seq. 170 seq.

[4] Acta Pii IX. vol. ii. p. 188.

[5] Cardinal Antonelli, in the answer (26 July 1860) to the Baden memorial of June 1860.

§ 11.

It has been said: 'We have the right in judging the Popes and their decrees to apply the modern standard, because Rome has remained unchanged in its doctrines and endeavours.'[1] In this there is a mixture of truth and falsehood. It is true that as to *doctrines* of faith and morals Rome has remained unchanged, as well as in her endeavours, corresponding to her duty, to maintain and extend everywhere the Catholic religion. But as to matters of *discipline* she has paid due regard to changed times and circumstances; she has made no claim to rights that rested, as the deposing power, merely on mediæval law, but rather has expressly recognised their cessation; she has made manifold concessions in Concordats, and has kept to them in spite of frequent breaches of faith by the other party; in opposition to the Revolution she has strengthened the monarchical power and has proclaimed its inviolability; she has exposed herself to the full hatred of the conspirators of Europe, with whom so many governments coquette and make common cause; she has for her part done all she could to repel and to vanquish the dangers that threaten society and civilisation. Are these her titles to be considered a danger to the State?

[1] Huber, p. 53.

ESSAY II.

DOCTRINE OF PAPAL INFALLIBILITY.

On the 18th of July 1870 the Vatican Council defined as revealed dogma, 'That the Roman Pontiff, when he speaks ex cathedrâ—that is, when in discharge of the office of Pastor and Teacher of all Christians, by virtue of his supreme apostolic authority, he defines a doctrine regarding faith or morals to be held by the universal Church—is, by the divine assistance promised to him in blessed Peter, possessed of that infallibility with which the Divine Redeemer willed that His Church should be endowed in defining doctrine regarding faith or morals; and therefore such definitions of the Roman Pontiff are of themselves, and not from the consent of the Church, unalterable.'

During the Session of the Council the definition met with some opponents, a few of whom, since that time in open rebellion against Church authority, have continued their opposition, resisting the doctrine of infallibility as *irrational*, *novel*, and *dangerous*.

The examination of these three charges will serve at once to explain and confirm the dogma.

Part I. What is meant by Infallibility.

§ 1. Its subject: the Pope discharging his office of universal teacher. § 2. Its object: questions of faith or morals. § 3. Its cause: the assistance of the Holy Ghost. § 4. Its connection with the infallibility of the united episcopate. § 5. Tokens and limits of an ex-cathedrâ definition. § 6. Infallibility in no wise irrational.

§ 1.

The definition has been called irrational, and to justify this expression the doctrine has been gravely misrepresented. 'God alone is infallible,' said a writer in the *Allgemeine Zeitung* at

the time of the Council. 'The Pope by claiming infallibility claims divinity.' Schulte speaks of 'a Pope who has been invested with divinity;' of 'an incarnate, inspired, absolute, divine infallibility;' others again of 'the oracle on the banks of the Tiber who can always be appealed to, and who pronounces with full inspiration.' God alone of His own nature is infallible and cannot err, but He can by His omnipotence keep whom He will from error. Catholics have always believed in the infallibility of the Church and of General Councils, without supposing them to be deified. Infallibility is not impeccability. The Pope can sin like other men, and is equally bound to penance. Infallibility is not granted to him in his private capacity for his own welfare, but is a grace added to his office for the good of the Church. This distinction between an individual and his office is not new, neither is it unknown in other cases. The priest also acts infallibly when, by pronouncing the words 'This is My Body,' 'This is My Blood,' he consecrates and changes the bread and wine, even although at the time he be in sin. If in the case of a priest we must distinguish between his personal worthiness or unworthiness and the exercise of his holy office, we must in the same way distinguish between the person of the Pope and the discharge of his office as Vicar of Christ and Pastor and Teacher of all the faithful. When we say the Pope (as Pope) is infallible, we speak thus for the sake of brevity; infallibility does not belong to the Pope's person, but to his office as teacher.[1] The phrase 'personal infallibility' is one very liable to be misunderstood. It can properly only be used when it is applied to St. Peter or any of his successors, each individual Pope, in the exercise of the highest functions of his office as universal teacher, and when thus used it means that his definitions are infallible before they have received the sanction of the Church. But at the same time this sanction can never be wanting; the Head of the Church can never be separated from the body; the Pope as Head cannot be imagined without the members.[2] There can be no question of a 'separate infallibility.'

In adducing a series of ill deeds on the part of Popes as an

nents. The Church never decides upon questions raised by merely human curiosity, having no bearing upon revealed doctrine, and referring solely to temporal matters.

[1] Bouix, Tract. de Papa, Paris, 1869, vol. i. P. ii. sect. 1, c. i. p. 235: 'Agitur dumtaxat de infallibilitate in definitionibus fidei libere a Papa, non tamquam doctore privato, sed quatenus universali pastore pronunciatis.' Cf. Kettler, Das Unfehlbare Lehramt des Papstes.

[2] Du Plessis d'Argentré, Coll. Judic. i. p. 117.

[3] Bouix, t. ii. p. 469 seq. Cf. p. 445 seq.

[4] In 1704 the theological faculty of Douay drew this out in detail in their opinion on the notorious 'cas de conscience' (Du Plessis, t. iii. P. ii. pp. 425-439). Cf. Bolgoni, Fatti dogmatici ossia della infallibilità della Chiesa nel decidere sulla dottrina buona o cattiva de' libri; Brescia, 1788. Janner, De Factis Dogmaticis, Dissert. inauguralis; Wirceb. 1861: V. Schäzler, Die papstliche Unfehlbarkeit, p. 191 seq. Friedrich refuses to allow that ecclesiastical infallibility extends to facta dogmatica. We shall show later that the condemnation of Honorius by the Sixth Council, in so far as it was an ecumenical judgment, in no manner interferes with this extension.

[5] C. A nobis, 28 de Sent. excom. v .39. The judgment of Innocent III. is also applicable; according to which any one may be bound in the eye of the Church and not in the eye of God, and conversely: Innoc. III. l. ii. ep. 61, ad abbat. S. Andreae, pp. 599, 600. Abreptio and subreptio are here possible. Cf. Leo X. 1517, c. iii. Inhaerendo, v. 9, in Sept. The Pope may err in all Acts and Decrees not relating to revealed truth (Bouix, l.c. p. 238, prop. 3). Calixtus III. wrote to Frederick III. in reference to appointments to benefices: 'Possumus enim et nos ut homines aliquando labi et errare, in his maxime, quae *facti* sunt' (Aen. Sylv. ep. 385). This is the meaning of the utterance of Paul IV. brought forward by the Gallicans in 1557 (Du Plessis, t. iii. P. i. p. 385).

[6] Vide Schätzler, p. 202.

§ 3.

Infallibility is in no sense 'omnipotence,' in no sense 'a creative dogmatic power' enabling the Pope to create new dogmas at will. The definition of the Council excludes the possibility of this; it says, 'For the Holy Spirit was not promised to the successors of Peter, that by His revelation they might make known new doctrine, but that by His assistance they might inviolably keep and faithfully expound the revelation or deposit of faith delivered through the Apostles.' But some have feared that the Popes may abuse the gift; this also the decision of the Council renders impossible. The very essence of the assistance of the Holy Ghost is the preservation of the Popes from the

abuse of their supreme office of teacher, otherwise the Church would be plunged into error. The whole question is, whether or no Christ has promised such an assistance. If the Pope, in the discharge of his office of supreme teacher, has the assistance of the Holy Spirit, it is impossible the case should ever arise of a Pope misusing his power to the injury of the Church. This assistance is not a direct communication from the Holy Spirit, in other words, an inspiration; but by it the Pope is preserved from error in declaring and defining the truths of revelation. No appeal to the remissness of certain Popes in matters of faith is relevant to the present question, which is solely concerned with positive decisions. Christ promised to St. Peter and his successors that their faith should never fail. He did not promise that they should always fulfil in the best manner their mission of confirming the faith of their brethren. Pope Honorius may be reproached with having encouraged error indirectly by not proceeding against it with timely vigour, but it cannot be said that he ever defined error, which would alone tell against the dogma. Dr. Friedrich again misrepresents the dogma when, referring to Pope Honorius, he exclaims: 'A Pope who is capable of partaking in the guilt of spreading heresy, who can very possibly leave the Church in heresy and help to make her so, is, forsooth, to be infallible!' A Pope is not infallible in proceedings such as those of Honorius, who contributed unintentionally to the increase of heresy by not issuing decisions against it.[1] His letters contain no decision, neither do they contain any false doctrine. No decision of his ever was or could be condemned as false, otherwise the Sixth Council would have contradicted itself, for it recognised that the Holy See had in all time the privilege of teaching only the truth. He was condemned for having rendered himself morally responsible for the spread of heresy by having neglected to publish decisions against it; and in this sense alone was his condemnation confirmed by Leo II. As regards the case of signatures extorted from the Popes—for instance from Liberius and Paschal II.—the want of freedom would render it impossible that these could be ex-cathedrâ decisions. The definitions of the doctrine of the in-

fallibility does not exclude the possible case of the internal conviction of the Pope not being necessarily the truth. The infallibility of the decision of a Pope speaking ex cathedrâ proceeds not from his own personality; *he* is not ex sese (of himself) infallible, but is so only from the assistance of the Holy Spirit. The *decisions* are infallible *in themselves*, and not only when they have received the consent of the Church, which was the doctrine of the four so-called Gallican articles rejected by Innocent XI. in 1682 and by Alexander VIII. in 1690. In 1682, thirty-five French prelates—of whom nearly all afterwards retracted, and excused their conduct on the plea that they had acted under fear of the king—assembled by order of Louis XIV., and laid down four articles as a foundation for the 'liberty' of the Gallican Church. In the fourth article this passage occurred: 'In matters of faith the Pope has supreme authority, and his decisions are binding upon all Churches, and each Church in particular, but his judgment is not infallible without the consent of the Church.' It shamefully misrepresents the dogma to refer the words ex sese to the person of the Pope instead of to the decision ex cathedrâ, thus misinterpreting the opposed proposition, 'and not by the consent of the Church.'

[1] The condemnation of Honorius is only valid inasmuch as it was confirmed by the Holy See. The French writer, Du Plessis d'Argentré (Collect. Judic. t. i. Praef. p. 3), says: '(Leo II.) cum ea exceptione acta sextae Synodi confirmat, quod Honorius ex sua parte tantam permiserit immaculatam fidem maculari. *Itaque Latini* Honorium Papam nonnisi ut fautorem haeresis Monothelitarum condemnare voluerunt.' Cf. Schwane, Dogmengesch. der Patrist. Zeit, p. 524 seq.

§ 4.

It is incumbent upon the Pope as well as upon the Council before deciding a question to search into the sources of divine revelation, and thus to have recourse to human means for inquiring after the truth. But all human means would not suffice to give us divine faith in a doctrine defined, whether by Pope or Council. The assistance of the Holy Spirit promised by Christ can alone give us absolute certainty of the infallibility of the doctrinal decisions of the Church. This promise Christ

made as much to the Head of the Church as to the head joined to the body of bishops.

The opponents of the dogma assert what is absolutely false, in saying that the doctrine of the Pope's infallibility deprives the episcopal body of the gift of infallibility, and places a single man in the position occupied by the whole Church. The promises vouchsafed to the entire episcopate and to the Church retain their full efficacy; the authority of Christ, which is the supreme power of the Church, speaks in the Pope alone and in the episcopate united to him. The Pope decides not as an individual man, but as Head of the Church reflecting the mind of the Church, which can never be separated from its head. The episcopate has only received promises of infallibility when joined to its head; apart, or separated, it has received none. The infallibility promised and granted to the Head of the Church and to the Apostles with St. Peter (active infallibility) is no other than that secured for the collective body of the faithful (passive infallibility) through the teaching office of the Church.

§ 5.

How is an ex-cathedrâ decision to be recognised? what are the signs by which it is to be distinguished from other utterances? Long before the Vatican Council theologians had discussed the tokens of an ex-cathedrâ decision,[1] and collections had been made as in Denzinger's *Enchiridion* of creeds and definitions,[2] the Popes of the Middle Ages laid great stress upon the intrinsic differences of their acts. Infallibility is bounded by the salvation of men, which is its end, and by God's revelation, to which it must conform. Innocent III. clearly states that judgments about persons in individual cases must not be supposed to be infallible. Benedict XII. carefully distinguishes between what he taught by a dogmatic decision[3] upon the beatific vision from what he had propounded on the same subject in his private writings.[4] For the Pope speaks ex cathedrâ only when, without constraint or fear, in perfect liberty,[5] for the protection of the unity of the Church, and for the removal of disputes in matters of faith or morals, he pronounces a deci-

sion or condemnation upon a question regarding faith or morals, whether it be that he excommunicates as heretics and excludes from the Church's communion those who teach contrary doctrine, or whether he defines a doctrine regarding faith or morals as one to be held by the whole Church. Pope Agatho (A.D. 678) held his dogmatic letter to be binding upon all believers. The intention of binding all the faithful in virtue of the office of supreme teacher must be expressly stated. A critic of Bishop Fessler shows no understanding of the matter when he says that the proposition, the Pope must express the intention of binding by virtue of his office of supreme teacher, is new, and possibly condemned by Rome, since old theologians — for example, Gregory of Valencia[6] and Melchior Canus — have taught this 'new doctrine' on various occasions; and it stands to reason that the Pope is able and willing to express clearly when he publishes a decision in matters of faith as supreme teacher of the Church. The Popes have always made quite clear when they pronounced such decisions; for example, Boniface VIII., in the Bull 'Unam sanctam,' makes quite clear that due obedience towards the Popes is binding upon all ('declarimus, dicimus, definimus et pronuntiamus').

[1] Petrus Ballerini, de Vi ac Ratione Primatus, Veronae, 1766, c. xv. Vide a detailed criticism, by Merkle, on the opinion delivered by the majority of the Munich theological faculty upon the subject of a Papal ex-cathedrâ decision, Dillingen, 1869.

[2] Denzinger, Enchiridion symbolorem et definitionum, Wirceb. edit. iii. 1856; edit. iv. 1865.

[3] Const. Benedictus Deus IV. Kal. Feb. 1336. Raynald. a. 1335, n. 9. Denzinger, Enchiridion, n. 456, p. 182, ed. iv.

[4] Ap. Raynald. a. 1335, n. 24: 'Ista autem quae in hoc libello per nostrum ministerium posita sunt, sic accipi volumus (exceptis conclusionibus per Nos in constitutione, quae incipit *Benedictus Deus*, determinatis) quae non per modum determinationis ecclesiasticae nec ut papaliter dicta aestimantur, sed ut *scholastice* et *magistraliter* dicta habeantur, sic, quod licitum sit cuique in illis dicere, quod ei magis consonum fidei et veritate divinae Scripturae ac dictis Sanctorum videbitur esse dicendum.'

[5] The necessity for liberty is included in the required intentio obligandi, which is not possible without liberty. Cf. on this point Ballerini, l.c. pp. 288, 289.

[6] Gregor. de Valentia, t. iii. disp. 1, q. 1, punct. 7, q. 6, p. 301: 'Quotiescunque Rom. Pontifex in fidei quaestionibus definiendis illa, qua est praeditus, auctoritate utitur ab omnibus fidelibus tamquam doctrina fidei

recipi divino praecepto debet ea sententia, quam ille decernit esse sententiam fidei. Toties autem eum ipsa auctoritate uti credendum est, quoties in controversia fidei sic alterutram sententiam determinat, ut ad eum recipiendam *obligare velit universam Ecclesiam.*' Cf. Melch. Canus, de loc. Theol. l. v. c. v. § Illud item, f. 170.

§ 6.

If we have a true comprehension of the doctrine of the infallibility of the Pope we shall see that it cannot be called irrational. It only appears so when it is misrepresented as its opponents have allowed themselves to misrepresent it. Reason illuminated by faith must further admit that by this means the Divine Founder of the Church has kept His revelation pure and free from error; that the continual assistance of the Holy Spirit for this end is, though entirely supernatural, not contrary to reason; therefore reason need not deny it, though it can only be proved by divine revelation.

Part II. On the Evidences of Scripture and Tradition.

§ 1. Holy Scripture. § 2. St. Vincentius of Lerins. § 3. Testimony of the first six centuries. § 4. St. Irenaeus. § 5. The formula of Hormisdas. § 6. Faith and obedience. § 7. The second Council of Lyons and the Council of Florence. § 8. The Councils of Constance and Basle. § 9. Prohibition of appeal from the Pope. § 10. The fallibilest doctrine when new was only tolerated and often disapproved.

The doctrine of infallibility is said to be new, and to have been unknown in early Christian times. The Council appeals against this objection to 'the divine promise of our Lord and Saviour,' and to the traditions handed down from the earliest ages of Christianity. Thus the dogma, being founded upon Scripture and tradition, was of a nature to be defined by the Church.

§ 1.

First with regard to the Scriptural grounds for the dogma: our Lord first promised infallibility to St. Peter (Matt. xvi. 18); then He obtained it for him by prayer from His Father (Luke xxii. 32); lastly, He conferred it upon him (John xxi. 15-17).

a. Matt. xvi. 18: 'Thou art Peter, and upon this rock I will build My Church; and the gates of hell shall not prevail

against it.' Simon Peter had just confessed his faith in the divinity of our Lord with the words, 'Thou art Christ, the Son of the living God.' Our Lord upon that said to him, 'And I say to thee, Thou art Peter,' and the rest. Our Lord built His Church upon Peter; Peter is the foundation of the Church.[1] The gates of hell shall never prevail against the Church, neither therefore against its foundation,[2] for with the foundation the superstructure also would give way. The Fathers consider false teachers amongst the 'gates of hell.' According to Leo the Great, the strength of the rock remains as firm as the divinity of Christ which Peter confessed.[3] Some in our day are desirous of separating the Popes from the Fathers of the Church; but it is undeniable that Leo the Great and Gregory I. were recognised as Fathers of the Church even by the Easterns. Even Photius, when speaking of the Western Fathers St. Ambrose, St. Augustine, and St. Jerome, calls the Popes Damasus, Celestin, and Leo 'Patres Patrum' (Fathers of the Fathers).[4] The promise of our Lord made after and on account of a solemn profession of faith has special reference to the indefectibility of the faith.[5] The Church is the pillar and ground of the truth (1. Tim. iii. 15). St. Ambrose says: 'Peter, the foundation of the Church, must stand firm against all false teachers.'

b. Luke xxii. 31, 32: 'Simon, Simon, behold Satan hath desired to have you, that he may sift you as wheat. But I have prayed for thee that thy faith fail not; and thou, being once converted, confirm thy brethren.' Christ, who knew that His Father always heard Him (John xi. 42), prayed for infallibility for Peter, and commissioned him to confirm his brethren. This passage serves also to explain the former one, and we can compare the corresponding statements in each, namely: the gates of hell assail the Church—Satan tempts the Apostles: Peter is the rock of the Church—for his faith shall not fail: upon Peter the Church is built—he shall therefore strengthen his brethren.

When the opponents of the dogma assert that this passage has only recently been adduced in favour of infallibility, they show their ignorance of Scripture and of the interpretation given

to it by the Fathers and theologians. St. Leo says: 'In Peter the strength of all is upheld, and the assistance of divine grace is in such manner dispensed, that the strength given to Peter is through him distributed to the rest of the Apostles.' Gelasius I., Gregory I., and other Popes, refer these passages to the successors of St. Peter. 'Dr. Döllinger wrote: 'The chair of Peter should be the abode of truth. . . . For our Lord's words, like His prayers, were not intended merely for the single persons addressed, and for the immediate moment; . . . they apply above all to the Church, and to its future needs which He foresaw.'

c. St. John xxi. 15-17: 'Feed My lambs, feed My sheep.' Christ, who calls Himself the Good Shepherd (St. John x. 11), appoints St. Peter to be His representative as shepherd of His whole flock, of His lambs and of His sheep. The shepherd must guard his flock from destruction; he must protect it from the wolf that goeth about in sheep's clothing—that is from false teachers (St. Matt. vii. 15); he must lead it into good pastures, and must maintain it in unity of faith. The sheep must hear the voice of the shepherd (St. John x. 3, 4). The good shepherd will instruct his flock in the faith. Our Lord said to the Jews, 'You do not believe, because you are not of My sheep' (John x. 26). It was not necessary to use the word 'teach' instead of 'feed.' The wider signification of 'feeding' includes that of 'teaching.' In the Church the supreme pastor must be the supreme teacher. But unless the word of the shepherd were infallible, it would be impossible to accomplish the charge and obligation undertaken as Vicar of Christ. Whosoever possesses supreme power in the Church must be the supreme and therefore infallible teacher. These three passages from Scripture are most closely connected together. That which Christ promised to Peter immediately after his confession of faith, that for which He besought His Father at the Last Supper, was that with which He invested him when he had confessed his love. 'Simon, lovest thou Me?' Peter is the rock on which was built the spiritual edifice of the Church. He is the shepherd of Christ's whole flock, the foundation that can never be prevailed against, the shepherd whom all his sheep must follow; for Christ prav'

for him that his faith might never fail; and he received the charge of confirming his brethren.

Even Gallicans concluded from these passages that the divine assistance would prevent any error from obtaining more than temporary admission into the Church of Rome or the Holy See; that after some uncertainty truth would always prevail.[6] But our Lord promised His Church that He would be with her all days, even to the consummation of the world (St. Matt. xxviii. 20). He would have abandoned her, if the supreme teacher whom all are bound unreservedly to follow[7] were to define erroneously some article of faith. Christ's prayer for Peter would not have been answered. If His Vicar taught error instead of truth he would be no good shepherd, no rock; he would himself be the ravening wolf from which he should have guarded the fold. Our Lord's promise must apply to each successor of St. Peter as supreme teacher individually, not merely to his successors in the aggregate, as Gallicans pretend. The Popes for many centuries have acted on the presumption of their infallibility, have encouraged those who have upheld it, and have allowed it to be taught openly. If the infallibility of the Pope's office of universal teacher were an error, the Holy See and the Church of Rome would long since have fallen into error, for they have committed themselves to the doctrine, first tacitly, and now expressly. The opponents of the dogma cannot deny that at least in recent times the Popes have acted on the supposition that their decisions were final, and have been supported in so doing, for example in the definition of the Immaculate Conception in 1854. They leave the Gallicans far behind in their objections, and cannot refer to them for a justification of their acts.[8]

[1] Leo M. sermo 3, c. iii. p. 13, ed. Ball: 'Firmitatem petrae, quae nullis impulsionibus quateretur, accessit.'

[2] The Fathers say this expressly.

[3] Leo M. serm. 3 al 2, c. ii. p. 12, ed. Ballerine.

[4] De Sp. S. mystag. c. lxxviii. seq. lxxxi.

[5] Bossuet, Def. p. iii. l, x. c. l. t. ii. pp. 191, 192: 'Illud immotum quod in fide Petri omnis ab origine agnovit antiquitas, id duplici modo a PP. intellectum: 1. ut Ecclesia catholica in fide Petri immota consistat; 2. ut immotum aliquid et invictum in Ecclesiam quoque particularem Romanam ac Sedem Ap. Quibus verbis (Math. xvi. 18) Christus, qui suam

maxime unam volebat Ecclesiam, creavit magistratum amplissima prae ceteris potestate ac majestate praeditum, qui omnes moveret ad unitatem, *maxime in fide*.' Cf. c. xxxv. p. 254 seq.

[6] Bossuet, l.c. c. v. p. 197, § Accipiendi ergo.

[7] Gerdil, Opp. t. xiii. Animadv. in Com. Febroni Posit. vii. n. 2: 'Quid igitur? Sic nobis existimandum est, Christum, qui pro sui promissi constantia continuo adsit, ut error statim repellatur et labefactata fides statim reviviscat, non potius lapsuro subventurum, ne labatur? Quid si promissio Christi fidem in successione Petri nunquam defecturam, prorsus id postulet, ne ullo umquam tempore corruat? Commenta haec sunt optantium, non cogitata sapientium.' Cf. ib. 325 seq. t. xiv. pp. 159-164.

§ 2.

But it is said that the doctrine of the infallibility of the Pope was quite unknown for a thousand years, that it was not believed and not taught.[1] In support of this assertion, opponents of the dogma appeal to the words of St. Vincent of Lerins:[2] 'We are to hold that which hath been believed everywhere, always, and of all men.' These words are undoubtedly true, but the conclusion the opponents draw from them is false: The infallibility of the Pope has not been believed everywhere, always, and of all men; therefore it cannot form part of the teaching of the Church. But if this conclusion were sound, every decision on a question of faith by a Council of the Church would be unnecessary or impossible. For example, had the dogmas defined by the first six Councils been believed everywhere, always, and of all men, there would have been no Arians, Macedonians, Nestorians, Monophysites, or Monothelites, and definitions would not have been called for from the Church. St. Vincent does not say, *only* that is to be believed which has been held everywhere, always, and of all men. Such a proposition would be false. If it were true, either there must never have been a dispute or difficulty in a matter of faith, or the Church from the mere fact of the dispute would be unable to decide the question. Thus the gift of infallibility would have been useless. St. Vincent lays down a rule for the guidance of individuals, not for the direction of the Church.[3] For it is a matter of course that that must be believed which the Church proposes for belief. Thus the doctrine of the infallibility of the Pope could and ought to have been believed before it was de-

fined, but it was not necessary for every one to believe it, as it was after the definition. The Vatican Council made this perfectly clear, for it added to the definition these words: 'Therefore if any one, which God forbid, should venture to gainsay this our decision, let him be anathema.' St. Vincent gives three tokens by which truth may be recognised—that it has been believed at all times, in all places, and of all men. Now it is a fact that throughout the Middle Ages the doctrine of the Pope's infallibility was dominant and universal. Not till after the schism and the Council of Constance was it in some places obscured and overshadowed.[4] But that which has for centuries been universally taught by the Church cannot be an error, otherwise the infallibility of the Church, whether active or passive, would be lost.[5] Can the opponents of the dogma prove, on the other hand, that the fallibility of the Pope in defining matters of faith has been believed everywhere, always, and of all men, or even only during one century, everywhere, and by all? Certainly not. Only isolated Churches and individuals have temporarily doubted the infallibility of the Pope.

[1] Döllinger, Erwägungen, p. 1-3. Schulte, iii. p. 1.

[2] Commonit. I. c. ii. (Migne, l. p. 640): 'In ipsa autem Catholica Ecclesia magnopere curandum est, ut id teneamus, quod ubique, quod semper, quod ab omnibus creditum est.'

[3] Cf. the Relatio de Observat. PP. Conc. Vat. Friedrich, doc. ii. pp. 311-313.

[4] Ruard. Tapper Or. iii. Andreas Duval (apud Zaccaria Antifebron. Vindic. diss. v. c. ii. n. 2. Antifebronio, P. i. diss. ii. c. x. n. 8), Petr. Ballerini de potest. Eccles. Append. § 12. Theophil. Raynaud. Opp. xx. 389, ed. Cracov. 1669. The testimony of Peter d'Ailly, Gerson, and others in Bouix, de Papa, t. i. P. ii. c. vi. p. 464 seq.

[5] Canus de Loc. Theol. xii. 6, n. 8, f. 371: 'Si scholastici theologi aliquam conclusionem firmam et stabilem uno ore omnes statuerint atque ut certum theologiae decretum fidelibus amplectendum constanter et perpetuo docuerint, illam ut catholicam veritatem fideles sane amplectemur.' L. viii. c. iv. concl. 3, f. 239: 'Concordem omnium theologorum scholasticorum de fide aut moribus sententiam.' T. i. disp. i. q. 1, punct. 7, § 45, p. 374: 'Quod universi doctores unanimi consensu tradunt, id sibi universa potest ac debet persuadere Ecclesia. Sed quod universa Ecclesia potest ac debet credere, id infallibiliter verum est.' Salmeron apud Andries, op. cit. p. 121 seq.: 'Quod, quia Ecclesia nec per unum quidem diem potest errore et semper sequitur sui temporis doctores, in communi, sen-

tentia doctorum cujusvis temporis Ecclesiae sensus invenitur non solum praesentis, sed et praeteritae, quia unus est spiritus.'

§ 3.

The opponents of the dogma, however, only allow the testimony of the first six centuries, and assert that during that time there was no question of infallibility. Now this is not a Catholic but a Protestant view, for it assumes a darkening, an eclipse of the light of the Church; nay, even an apostasy of the Church herself. Were the promises of Christ made only to the first six centuries? Could the Church after the sixth century no longer decide disputes about the faith? By what right can any one thus arbitrarily limit the operation of the Holy Spirit in His Church? If this were the case, all the decisions of the Church since the Sixth General Council must be rejected. Moreover, it is untrue that the doctrine of infallibility was unknown during the first six centuries. If the word 'infallibility' was not employed, we find expressions which mean the same thing, and whether the words 'Papal Infallibility' were employed or not, the thing itself existed always. The opponents (we might call them the Fallibilists), in requiring that the ancient Church should have used that identical expression, act as the Arians acted, who fancied themselves free to reject the decision of the Council of Nicea, because in its definition of the relation between the Father and the Son, a word was used (homousios, of the same nature) which was not to be found used of the Son of God either in Scripture or in the writings of the Fathers.[1] The divinity of the Son had always been an article of faith; but the disputes arising from the closer definition of His position with regard to the Father led to still more exact definitions, until the Church defined it expressly according to revealed doctrine. In the same way the doctrine of Papal Infallibility, whilst still undeveloped, was yet contained in the deposit of Faith, was presupposed to exist, and lay at the foundation of the decisions of the Church. A definition of this truth would have been quite unnecessary in the Middle Ages, when it was universally believed. Only when her doctrines had been in some places obscured, in others re-

jected, did the Church establish them more clearly and more firmly. But the doctrine of infallibility was, in fact, expressed in the fifth century, when Sixtus III. declared that upon the Pope was imposed the task of keeping pure the Church of God. Leo the Great says: 'I govern the Church in the name of him whose confession was glorified by the Lord Jesus, and whose faith destroys all heresies.' In the same century the Fathers assembled at the Fourth Council of Chalcedon declare: 'Peter has spoken through Leo. The statement already made [by the Pope] suffices. It is not allowable to change it.' Gelasius I. declared the judgment of the Pope to be final; Gregory the Great said that it removed all doubt. Are not these utterances quite one with the doctrine of infallibility, and in accepting these and others similar, and in acquiescing in the decisions of the Popes, has not the Church always practically confessed the doctrine? Why did the people of Corinth, whilst still the Apostle St. John was living, have recourse to Rome, to the successor of St. Peter, to obtain from him a decision? Why do all bishops without exception apply to the Pope for decisions, and consider themselves accountable to him? Even heretics, from Valentinus, Cerdon, Marcion, Praxeas, the Montanists, and Sabellians downwards, have, undeterred by their ill success, persevered in endeavouring to gain the Holy See to their cause, and to obtain a foothold in Rome. Surely these examples tell in favour of the infallibility of the Pope's office of supreme teacher.

St. Jerome in the fifth century testifies that the faith of Rome could not change, and that unity with the Pope was the test of Catholicity. St. Augustine, referring to the Pelagian heresy, shows he regards the decision of Rome as final. If, to weaken the force of his words, it is objected that the rescripts from Rome merely ended the matter for St. Augustine and the Western patriarchates, we soon see that this is only an empty evasion. Could the East and the West have a different creed? St. Augustine says further: 'Why desire another examination when the matter has already passed the Holy See? A condemned heresy should not be examined into by bishops, but put down by Christian powers.' Theodoret says: 'This most holy

See is set above all Churches on the face of the earth, for this reason amongst many, that it has never been defiled with the defilement of heresy, and that those who have occupied it have never taught heresy, but have always calmly guarded the apostolic gift.' Theodoret certainly did not mean that up to that time as a matter of fact no Pope had failed in faith; he did not hold the supremacy of Rome to be transitory. In his letter to Leo, he declares that he is ready to submit to any decision whatever of the Pope's. St. Peter Chrysologus says: 'St. Peter still lives and takes precedence. He gives the true faith to those who seek it.'[2] Now no one can give that which he does not possess; the successors of St. Peter must therefore possess the true faith. He gives it to those who seek it.[3] He does not seek it by inquiring amongst the bishops, that by their assent it may found; it is to be sought direct from *him*. Again, in the fourth century St. Ambrose declares, 'Where Peter is, there is the Church,'[4] which he infers from St. Matt. xvi. 18; and in the third century St. Cyprian testifies that the Church of Rome has never erred in matters of faith.

[1] Athanas. de Decret. Nic. Syn. n. 32. Socr. H. E. l. iii. c. vii. Thom. Sum. p. l. q. 29, a. 3, ad l.

[2] Petrus Chrysol. ep. ad Eutych. (Leon. M. ep. 25, Ball. i. p. 780).

[3] Ep. cit. c. ii. p. 741 seq.: 'In omnibus autem hortamur te, frater honorabilis, ut his, quae a beatissimo Papa Romanae civitatis scripta sunt (Gr. γραφόμενα), obedienter attendas, quoniam B. Petrus, qui in propria sede et vivit et praesidet, praestet (Gr. δίδωσι) quaerentibus fidei veritatem.' He thus lays down a general principle which cannot be limited to the ep. ad Flavian, with which the author is as yet unacquainted.

[4] Ambros. in Ps. xl. n. 30, ed. Paris, 1686, i. p. 879: 'Retro erat Petrus et sequebatur eum, cum a Judaeis ad Caiphae domum, synagogae principis, duceretur. Ipse est Petrus cui dixit: Tu es Petrus, et super hanc petram aedificabo Ecclesiam meam. Ubi ergo Petrus, ibi Ecclesia; ubi Ecclesia ibi nulla mors sed vita aeterna, et ideo addidit: et portae inferi non prevalebunt ei. Et tibi dabo claves regnorum coelorum.'

§ 4.

In the second century St. Irenaeus says:[1] 'That with the Roman Church, because of her more powerful supremacy,[2] all Churches must agree,[3] since in her, by all the faithful on the earth,[4] the tradition of the Apostles has been preserved.'[5] As

this important passage plainly expresses the infallibility of the Pope, the opponents of the doctrine are at much pains to weaken it, and interpret it in their own manner. They give these explanations: from all Churches many travellers went to Rome, and there expounded their belief; and it hence arose that the belief and traditions of these Churches were the same as those of the Church of Rome. Or again: the faithful who journeyed to Rome preserved the Roman Church in the true faith.[6] But if the faith of Rome were preserved pure by those who travelled to her, what end was served by her supremacy, a supremacy not of the city but the Church? Rome in this case must have learnt her doctrine from other Churches, not other Churches from Rome. But there came to Rome in those days many subtle and obstinate heretics, who were almost as numerous as the true believers. How was it she did not imbibe their doctrines? But above all, how in the still dominant heathen city could the foreign Christian pilgrims in the midst of persecution exercise such influence upon their scattered brethren? Would the Church, who holds so fast to her traditions, have yielded them to the strangers who collected around her? If she yielded not, but separated herself from the other Churches, then the words of St. Irenaeus lose all force, for in that case she would no longer have taught the doctrine of all Churches. Is it not much more probable that in case of any difference the travellers to Rome preferred to their own faith the faith of the Roman Church, the greatest Church and the most ancient, that happy Church into which, as Tertullian says,[7] the Apostles poured out together with their blood their whole doctrine, and which St. Cyprian calls the head and mother Church?

St. Irenaeus, however, does not appeal to the journeys to Rome, but to the succession of bishops. And as it would be too long to number the succession of bishops in all Churches, he gives a short and sufficient way of proceeding; for he says that to put false teachers to shame it suffices 'to declare the tradition received from the Apostles by the greatest Church, the most ancient, the most conspicuous, and founded and established at Rome by the two most glorious Apostles Peter and Paul, and

to declare the faith announced to men by this Church, coming even to us by the succession of bishops.' His argument is as follows: If the faith of the Roman Church has remained pure, the faith of other Churches must also have remained so. For all Churches universally acknowledge the duty[8] of remaining in harmony with the Church of Rome, and if we know the faith of the Roman Church, we know that of all others. Finally, after enumerating the successors of St. Peter, he says that through this succession the doctrine of the Apostles has reached us, and that we have by it the fullest assurance that the ancient faith will continue unchanged.

The interpretation given by our opponents to this passage is quite untenable. It contradicts those of earlier theologians, of Gallicans[9] even, and those which they once held themselves.[10] Its only true interpretation bears weighty testimony in favour of the doctrine of infallibility. For how could it be required of all Churches, that they should in matters of faith conform to the teaching of the Church of Rome (which Church is expressly mentioned), if the Roman Church herself might fall into error? Not without purpose does St. Ignatius the Martyr, the disciple of St. John, call the Church of Rome the president of love or of the league of love;[11] and St. Cyprian, the most eminent of Churches, whence the unity of the priesthood took its rise, and in which all should be united in the unity of faith and love.[12] She is the mother and mistress of all Churches.[13] Sixtus IV. rejected the proposition, the Church of the city of Rome can err (in matters of faith); and Alexander VIII. condemned that which said the infallibility of the Pope in matters of faith is untenable. The rejection of the four Gallican articles also was accepted universally in the Church; and this prepared the way for the Church's final decision. But other decisions of the Church had, without defining the infallibility of the Pope as an article of faith, allowed it to be presumed, and contained it, though obscurely.

[8] S. Iren. Adv. Haer. l. iii. c. iii. n. 2: 'Ad hanc [Romanam] enim ecclesiam propter potentiorem principalitatem necesse est omnem convenire ecclesiam, hoc est eos qui sunt undique fideles, in qua semper ab his qui sunt undique conservata est ea quae est ab apostolis traditio.'

[2] Propter potiorem (al. potentiorem) principalitatem. Salmasius gives the Greek: ἐξαίρετον πρωτεῖον: Massuet, ὑπέρτερον πρωτεῖον: Gieseler, ἱκανώτεραν πρωτεῖαν: Armellini (De Philosophum, p. 25), ἱκανώτεραν αὐθέντειαν.

[3] Convenire was clearly the Greek συμβαίνειν, as even Salmasius (De potest. Papae, c. v. p. 69, ed. Lugd. Batav. 1645) admits. The translator gives (l. iii. c. xii. n. 14) convenire for συμφωνεῖν (Acts xv. 15). He also (l. iv. c. xxxv. n. 3) uses convenire for to harmonise, agree. Cf. also Hagemann, Die Röm. Kirche, p. 614 seq.

[4] The Greek expressions οἱ πανταχοῦ and οἱ πανταχόθεν are in ecclesiastical use quite synonymous. St. Irenaeus himself explains the words qui sunt undique fideles by omnis ecclesia.

[5] If we here reduce the passive to the active we get more clearly: since in her all the faithful preserve the apostolic tradition; or in Latin: in qua hi qui sunt undique fideles servant eam, quae est ab Apostolis traditionem. By using the passive we are reminded of the words of Optatus (De Schism. Donat. l. ii. c. iii. Migne, PP. lat. xi. p. 947-949): 'In qua una cathedra unitas ab omnibus servaretur;' and of St. Augustine's expression (ep. 43, ad Glorium, Eleus et Fel.): 'In qua (ecclesia) semper viguit apostolicae cathedrae principatus.' The 'in qua' is to be taken in the ecclesiastical sense of the Greek proposition ἐν, and thus can be taken as 'in her bosom,' 'in her communion,' or 'through her,' 'by virtue of her.' Cf. the biblical and patristic expressions, ἐν κυρίῳ, ἐν θεῷ, ἐν τούτῳ κρατύνεται, and others. The translator of St. Irenaeus often uses 'in' for 'per:' l. iii. c. xii. n. 4: 'Salutem in eo (Jesu) dedit hominibus:' c. xviii. n. l.: 'Ut quod perdideramus in Adam, hoc in Christo reciperemus:' l. iv. c. xxi. n. 3: 'In Christo universa benedictio.' Cf. also the famous ἐν τούτῳ νίκα. Maret (vol. i. p. 152) omitted the 'in qua,' and rendered 'qui sunt undique fideles' wrongly, as: 'de tous les côtes les fidèles.' Vide on this point Guéranger, The Supreme Teaching Office of the Pope, German transl. p. 81.

[6] Friedrich, Tagebuch, p. 371. Cf. pp. 3, 4. Döllinger, Erwägungen, p. 89.

[7] Tertull. de Praescr. c. xxxvii. Bossuet held it to be quite untenable to suppose that 'potentior principalitas' applied to the city and not to the Church of Rome. Def. Declar. P. iii. l. x. c. vi. t. ii. p. 198.

[8] Necesse est (ἀνάγκη). This is also used by old translators to signify a moral necessity (Schneeman, l.c. p. xxvii.), but it equally expresses the necessity of a law of nature (Hagemann, l.c. p. 618).

[9] De Marca, de Conc. Sacerd. et Imp. l. i. c. ii. n. 60: 'Commune hoc officium communionis cum ecclesia Romana .... cognoverat ante omnes vetustissimus ille Lugdunensium antistes Irenaeus..... Quasi diceret, eam esse vim unitatis, quae principium et originem a Petri sede trahit, ut *cum ea sentiendi necessitatem ceteris* imponat.' Stephan. Baluz. annot. 63, ad Cypr. Ep. 55. Feuardent et de la Bare in h.l. Iren. et Tert. praescr. c. xxxviii. Bossuet, Orat. in Comit. a. 1682, Instr. past. 2, super promiss. Eccl. Cf. Freppel, St. Irénée et la Primauté du Pape (separate copy from vol. iv. of his larger work, 1870).

[10] Friedrich, Kirchengeschichte Deutschlands, i. p. 409. Döllinger, Gesch. der Christl. Kirche, i. p. 365 ff.

[11] Ign. ad Rom. init.: προκαθημένη τῆς ἀγάπης. Cf. Möhler's Patrologie, p. 144.

[12] Cypr. Ep. 45, ad Cornel.; Ep. 55. Möhler's Patrologie, p. 869 seq.

[13] Conc. Trid. Sess. vii. de bapt. can. 3; Sess. xiv. de extr. unct. cap. iii.; Sess. xxii. de Sacrif. Miss. cap. viii.; Sess. xxv. decr. de delectu cibor. Conc. Later. iv. c. v. (c. xxviii. de Privil. v. 33). Also 1073, Gregory VII. l. i. Ep. 15, ad fidel. Lomb. p. 297. Nicol. i. 865, Ep. 8 (Mansi, xv. 187). Hinkmar of Rheims, de Divortio Loth. reg. Praef. says: 'De omnibus dubiis vel obscuris, quae ad rectae fidei tenorem vel pietatis dogmata pertinent, S. Romana ecclesia, *omnium ecclesiarum mater et magistra, nutrix ac doctrix*, est consulenda et ejus salubria monita sunt *tenenda*.' The later Sorbonne acknowledges it also; for example, Decretal of the 24th May 1664 (Du Plessis d'Argentré, t. iii. P. i. p. 106).

§ 5.

We come now to the formula of Pope Hormisdas in the year 519. Dr. Döllinger, in his Church History, tells us it was subscribed at the time by two thousand five hundred bishops, and was confirmed by the Fathers of the Eighth General Council, A.D. 869. The Vatican Council cites from it these words: 'The first condition of salvation is to keep the rule of the true faith. Now the words of our Lord Jesus Christ cannot pass away, who said, "Thou art Peter, and upon this rock I will build My Church" (St. Matt. xvi. 18); moreover these words have been made plain by the event, because in the Apostolic See the Catholic religion has always been kept undefiled, and the holy faith held in honour. Desiring therefore not to be in the least degree separated from the faith and doctrine of this See, we hope that we may deserve to be in the one communion which the Apostolic See preaches, in which is the entire and true solidity of the Christian religion.'

Many attempts are made to weaken the significance of this confession, which even Gallicans admitted.

a. We hear it said that the copies of the text are at variance with one another, and that the originals are lost.[1] These variations, however, do not touch the essential point, and are merely later additions, paraphrases, or abbreviations.[2] All copies contain these words: 'Therefore[3] in all things we follow the Apostolic chair, and preach those things which it has resolved upon.' This presupposes the truth and infallibility of Papal decrees in

matters of faith, for the whole drift of the passage concerns the purity of that faith 'which is always kept intact in the Apostolic See.' In the formula ratified by the Eighth General Council it is further said: 'At the same time we bind ourselves not to permit the names of those to be mentioned in the celebration of the Holy Mysteries who have left the communion of the Catholic Church, that is to say of those who are not in union with the Apostolic See.' To be a Catholic, and to be under obedience to the See of Rome, are here one and the same thing; whosoever does not obey the Holy See is excluded from the Church.

b. This formula is said to treat only of the primacy of the Pope. But the primacy of the Pope is preëminently one of doctrine,[4] and the formula of Hormisdas refers to the dogmatic definitions of the Holy See, and therefore to the teaching office of the Pope.

c. It has been said that this formula treats merely of the Apostolic See;[5] but it is only through him who occupies it that the Holy See is free from error or can promulgate its decrees. Those things determined on by the Holy See are the decisions of the Pope.[6] Whosoever binds himself to obey implicitly the Holy See presupposes that the decisions of every occupant of the Holy See in matters of faith are infallible.

d. If this formula of faith was first prescribed when one dogma, the Incarnation of the Son of God, was being treated of, still the terms used are quite general ones. It was, as Bossuet acknowledged, often repeated, and transmitted to all centuries from the Eighth General Council, at which, though the former question was not being treated of,[7] the formula was proposed and sanctioned in quite general terms, and indeed as a necessary condition of participation in the proceedings. 'What Christian,' Bossuet inquires, 'could reject this profession of faith?'[8]

e. Finally, it has been objected that this formula must be explained by the words of Pope Gelasius and of St. Irenaeus, and that it possesses not much real weight. But hear Pope Gelasius; he says: 'The decretals of the most blessed Popes are to be received with reverence. The Apostolic See must guard

the decrees of the Councils.' Gelasius also says: 'In matters concerning religion the Apostolic See possesses the supreme judicial power; we are especially to learn from the Holy See the things that are of God.' Further, he says that the See of Peter is the safest harbour for the weak,[9] the constant guide of the Universal Church; that no court can reverse its decisions; that it continually guards the true doctrine; and that if it were to be spotted with any heretical perversity, which faith teaches us never can happen, there would be no power left for reclaiming those who had gone astray.

Our opponents appeal to the ancient oath administered to the Popes, which contained the promise to maintain inviolable everything which had been defined by Councils or by decrees of former Popes, and to permit no change or diminution in the Gospel revelation.[10] But this only presupposes what no one denies, that the earlier Papal decrees are inalterable and are binding upon later Popes. The Popes commonly issued their decisions at Councils, but they did not do so invariably, and as Pope Gelasius declares (A.D. 485) it was not necessary they should. In many documents a distinction is made between decisions by Councils and decisions by Popes alone. The Pope, however, as the Roman Synod of 485 declares, always decides everything as universal head by virtue of the promise given to St. Peter.[11] These decrees of Councils issued by the Popes derived their force from the Popes, not from the greater or less number of assembled Italian[12] bishops. If the early Popes commonly exercised their teaching office by Councils it was not necessary they should do so, and there is no reason the custom should be retained through succeeding ages. The Pope always will deliberate with bishops and theologians before deciding a disputed question; the form of the deliberation may be conciliar or it may not. It was besides quite understood in those days that the decisions of General Councils were only fully valid when they had received the assent of the Pope.[13] After the Council held at Ephesus A.D. 431 the Eastern bishops declared their conviction that the Pope could annul the resolutions there entered into. The Emperor Marcian only recognised

the decrees of the Council of Chalcedon, A.D. 451, as indisputable after their ratification had been issued by Leo the Great and published for all Churches.[14] The words of St. Irenaeus, as we have already seen, tend as little as those of St. Gelasius to weaken the significance of the famous formula of Hormisdas. On the contrary, they correspond with it exactly. If, according to St. Irenaeus, all Churches must agree in faith with the Church of Rome, and if, therefore, all bishops are bound to follow the decisions of the Pope in matters of faith, both these propositions imply necessarily the infallibility of the Pope, not in his personal character, but when he speaks ex cathedrâ by virtue of his office as universal teacher and judge. The duty of rendering unconditional obedience to such decisions would be degrading and unreasonable, unless it were understood that they could contain nothing contrary to the true faith.

[1] Friedrich, Bonn Th. Lit. Bl. 1870, pp. 369, 370. Cf. Synops. Observ. ap. Friedrich Doc. t. ii. p. 230, n. 22.

[2] Cardinal Pitra (Jur. Eccles. Graecor. Hist. et Monumenta, t. ii. Romae, 1868, p. 216 seq.), who has compared the formula with the Vatican Codices, 4931, saec. xi. 3787, saec. xii. and 3786 and 4903, and twice with the copy of Menna and with that of Justinian, and has exactly compared it with the text in Mansi, Conc. viii. 407, 452, 467, 502, 734, 847, 857, 870, ix. p. 37, speaks of the editorum Conciliorum procuratores qui eidem saepe formulae offendere pertaesi modo eam suppresserunt, truncarunt modo, &c. Prof. Theil published in the same year, 1868, the 2d Fasc. of his Epistolae Romanorum Pontificum Genuinae.

[3] In Mansi, viii. pp. 734, 847, we read: 'Anathematizamus omnes qui contra sanctam Romanam et apostolicam Ecclesiam superbiendo suas erigunt cervices, sequentes in omnibus Apostolicam Sedem.'

[4] Thus according to Leo M. Ep. 5, c. ii. St. Peter (and his successors) received the primatus fidei from our Lord; and the Emperor Marcian addresses this Pope in these words: 'Your Holiness, who has the direction and supreme guidance in the divine faith.' Theodoret, Ep. 116, p. 1324, attributes to the Pope the supremacy as well on other grounds as because of the inviolability of his See and its occupant, and the undisturbed preservation of the Apostolic grace. In a letter to Leo (Leon. Ep. 52, c. i.), with a reference to Romans i. 8, he makes mention of the faith amongst other prerogatives possessed by Rome, and declares himself (c. v. 6) ready to give absolute submission to the decisions of the Popes.

[5] Observationes quaedam de Infall. Eccl. Subjecto, Vindob. 1870, p. 28, § 5, according to Bossuet, Def. Decl. P. iii. l. x. c. vii. t. ii. p. 201. Also Synops. n. 22, l.c.

[6] Theodoret, ep. 116, speaks of the Apostolic See and its occupant. St. Jerome, whose words it is vain for Dr. Friedrich to misrepresent,

speaks of the 'cathedra' and of Pope Damasus as identical; it is quite contrary to St. Jerome's intention not to hold the Pope 'decernens,' or to limit the 'jubere' to the command to other bishops to draw up a profession of faith (instead of its being done by the Pope himself). To support their theory our opponents have to do violence to the words of the Fathers. St. Peter Damian says quite correctly to the Pope: 'Tu ipse es sancta Sedes, tu es ecclesia Romana' (Opp. iii. 221). Prosper (Opp. Aug. t. x. App. p. 176, ed. Paris, 1690) says the blessed chair of Peter speaks to the whole world by the mouth of Zosimus.

[7] We learn from the Acts of the said Council, Act iv. (Mansi, xvi. 337 seq. 73 seq.; Hard. v. 816), that at that time strangers who arrived in Rome were obliged to subscribe a formula, confessing the true faith and their submission to all the decrees of the Apostolic See.

[8] Defens. Decl. Cleri Gall. l.c. § Omnes ergo.

[9] Gelas. Ep. 14: 'Praestans Sedi, quam ipse benedixit, ut a portis inferi nusquam pro Domini promissione vincatur omniumque sit fluctuantium tutissimus portus.'

[10] Lib. Diurn. Rom. Pont. form. 84, p. 202, ed. Paris, 1869.

[11] Baron. a. 484, n. 26 seq. Mansi, vii. 1139: 'Unde nunc causa Antiochenae ecclesiae apud S. Petrum, collecti rursum delectioni vestrae *morem* qui *apud nos semper obtinuit* properavimus indicare. Quotiens intra Italiam propter ecclesiasticas causas, *praecipue fidei*, colliguntur Domini sacerdotes, *consuetudo* retinetur, ut successor praesulum Sedis Apostolicae ex persona cunctorum totius Italiae sacerdotum *juxta sollicitudinem sibi ecclesiarum omnium competentem cuncta constituat, qui caput est omnium*, Domino ad B. Petrum dicente: Tu es Petrus, &c. . . . . Quod ergo placuit S. Synodo apud B. Petrum . . . . per Tutum ecclesiae defensorem, et beatissimus vir *Felix, caput nostrum, Papa et archiepiscopus judicavit*, in subditis continetur.'

[12] The Jansenist views about 'Italian bishops' are well known from their literature.

[13] Ferrand. Diac. (Migne, lxvii. 925): 'Qua (Sede Ap.) consentiente quidquid illa definivit Synodus (Chalc.) accessit robur invictum.' Gelas. Ep. ad Episc. Dardan. et tom. de Anath.

[14] Leo M. Ep. 110, p. 1183 seq. ed. Ballerini.

§ 6.

But, our opponents tell us, obedience and faith are not one and the same thing. In themselves certainly they are not; there is obedience in action and obedience in faith[1] (Romans i. 5). The first is a submission of the will, the latter a submission of the understanding. Faith is, according to St. Paul, a reasonable obedience. Obedience to decisions in matters of faith can only be an obedience of faith, an obedience of the intellect. It is in no sense a 'new doctrine' that an internal, not merely an ex-

ternal, submission must be given to the decisions of the Supreme Head of the Church; this was, on the contrary, firmly established in the decisions against the Jansenists. For the Jansenists had admitted the Church's right to decide questions of doctrine, but with reference to a matter of fact whether a certain book contained false doctrine, they denied the infallibility of the ecclesiastical decision, and maintained that it was sufficient to preserve on the subject a respectful silence. Pope Clement XI., A.D. 1705, pronounced that a respectful silence was not equivalent to the obedience which the Church required. Since, therefore, outward faith, that is respectful silence, does not suffice, but inward faith, the true assent of the understanding, is required, it must be a question of obedience in faith. The teaching office of the Church rests on the commission received from Christ (Rom. x. 15, Matt. xxviii. 19, John xx. 21), and with it has been given the power of binding the faithful, under pain of exclusion from the Kingdom of Christ. The matters on which the highest office of the Church decides are matters of faith; the end and aim of such decisions is no other than to lay upon the faithful the duty of believing.

[1] ὑπακοὴ τῆς πίστεως, Romans i. v. Faith is, according to Basil, Or. de Fide, t. ii. p. 250, συγκατάθεσις ἀδιάκριτος τῶν ἀκουσθέντων: He requires the free will of men. Iren. Adv. Haer. iv. 37, n. 4, 5: 'Sed quoniam liberae sententiae ab initio est homo, et liberae sententiae est Deus, cui ad similitudinem factus est, semper consilium datur ei, continere bonum, quod perficitur ex ea, quae est ad Deum, obedientia. Et non tantum in operibus sed etiam *in fide* liberum et suae potestatis arbitrium homines servavit Dominus dicens: Secundum fidem tuam fiat tibi, &c. S. Matthew ix. 29, 22; viii. 13; xxiii. 37, 38. John iii. 36.'

§ 7.

The Vatican Council appeals moreover to the Second Council of Lyons. The Greeks, with the approval of this Council, pronounced the following confession of faith: 'That the Holy Roman Church enjoys supreme and full primacy and princedom over the whole Catholic Church, which it truly and humbly acknowledges to have received with the plenitude of power from our Lord Himself in the person of blessed Peter, Prince or Head of the Apostles, whose successor the Roman Pontiff is,

and as the Apostolic See is bound before all others to defend the truth of faith, so also if any questions regarding faith shall arise they must be defined by its judgment.' Until now no theologian had dreamt of disputing the value of this or any of the other General Councils of the West.[1] The opponents of the Vatican Council have already gone so far as to reject all the General Councils after the ninth, as having been held under the 'pressure of the Roman monarchy,' an opinion denounced in 1617 by the faculty of Paris and in 1618 by that of Cologne as false, slanderous, and scandalous.[2]

A striking testimony to which the Vatican Council has referred is afforded by the definition of the Council of Florence, A.D. 1438,[3] 'that the Roman Pontiff is the true Vicar of Christ, Head of the whole Church, and the Father and Teacher of all Christians; and that to him in blessed Peter was delivered by our Lord Jesus Christ the full power of feeding, ruling, and governing the whole Church.' The power of teaching the whole Church must be included in the supreme power here delivered to the successor of St. Peter for feeding, ruling, and governing the whole Church, and besides he is expressly called not merely Father but Teacher of all Christians. If the Pope is Teacher of *all* Christians, he is also Teacher of the bishops. If the bishops must follow the teaching of the Pope, the Pope must be infallible, or the Church would not be so.[4]

This decree has always been very perplexing to the opponents of the Holy See; hence they have sought in many ways to destroy its force. They affirm in the first place that the decrees have been falsified and that the original documents have disappeared.[5] But these assertions have been fully refuted. The originals have not disappeared.[6] The so-called falsifications appear in all the best authenticated copies,[7] and are accepted both by Catholic and non-Catholic theologians. The sentence, 'As it is contained in the Acts of the General Councils and in the Sacred Canons (the laws of the Church),' is obviously a reference to earlier Councils and Church legislation, as corroborative testimony in favour of the primacy of the whole earth, but is in no sense a limitation of the primacy.[8] He

indeed could the supreme power conferred by Christ Himself, as the definition of the Council expresses it, be limited and restricted by conciliar acts and canons?

But, we are told, the Council of Florence was not a General Council; that at least it was not universally recognised as such. How do they prove this assertion? As though grasping at straws they oppose to the universal acceptance of the Council not by any means the opposition of the whole French or German Churches (though even this would be far from decisive), but only that of individual Frenchmen, who opposed it because they did not see how it could be made to fit with their Gallican system. But it was not a united opposition of the whole Gallican body. In the time of Louis XIV. Pirot says: 'I know at the present moment no French Catholic who does not hold the Council of Florence to have been a General Council.' Since that time all French theologians have admitted the Council of Florence to have been general. But this goes for nothing with our opponents, who style these theologians unscientific. It becomes ludicrous when we find them appealing[9] to a single German text-book, Alzog's Church history, which does not even dispute the ecumenical character of the Council of Florence, but merely omits it from the chronological list of General Councils given in the appendix, an omission which the latest edition of the book has repaired. We learn from Friedrich's *Tagebuch* (p. 314) that 'the [German] bishops in a body hold the Council of Florence to be ecumenical. Hefele has demonstrated it to them; he is not, however, very trustworthy in his doctrine upon the Councils' (!). Döllinger also used to make no doubt that the Council of Florence was general.

Other objections, that the number of bishops who met was small, and that the Council was not free, are quite valueless. The number of bishops is of no importance, since all were invited. Our opponents seem to use two kinds of weights and measures, since they take exception in this case at the small number of bishops assembled, but not in the case of the Council of Basle, where the number was even smaller. The charge of want of freedom is founded upon nothing more than the slanders

of the schismatic Greeks, against whose testimony stands that of the orthodox Greeks and of the Latins.

[1] Bossuet (l.c. c. xxxiv. seq. p. 64 seq.) seeks to explain them in his favour.

[2] M. Anton. de Dominis, de Rep. Chr. l. iii. c. x. n. 11: 'Concilia occidentalia ut Lateranense sub Innoc. III., Lugdunense sub Greg. X. et Florentinum, sub jugo Monarchiae Romanae ecclesiasticae jam dominantis gemendo applaudere tanto Monarchae sunt coacta.' The faculty declares: 'Haec propositio est falsa, calumniosa et scandalosa' (Du Plessis, t. ii. P. ii. p. 109, prop. 43).

[3] Hard. Conc. ix. p. 424, ed. Rom. 1864, p. 320.

[4] M. Canus, de loc. Theol. l. vi. c. vii. Ballerini, de Vi ac Ratione Primatus, pp. 261-263. Append. ad Vindic. pp. 254, 259 seq.

[5] Janus, pp. 347, 348. Döllinger, in the Allgemeine Zeitung, 21st January 1871.

[6] Theodor Frommann, in the A. Z. 27th Feb. 1870. E. Cecconi, in the Armonia, 1st Feb. 1870.

[7] In Florence (Cecconi, l.c.), in Rome in the precious Codex of the archives of St. Peter, in Codd. Vatic. 4037, 4136 (Civiltà Cattolica, quad. 478, ser. vii. vol. ix.), also in the Carlsruhe copy. Gmelin, in Supplement of the A. Z. 24th August 1871.

[8] Turrecremata, super Decreto Unionis Graec. Venet. 1561, iv. f. 35. Bennettis, Privil. S. Petri, P. i. t. i. p. 486 seq. Ballerini, de Vi ac Ratione Primatus, t. ii. p. 59 seq. Gerdil, Animadvers. in Com. Febronii posit. xi. Opp. xiii. vol. ii. p. 11. Beidtel, Canon Law, p. 395 seq. Scheeben, Die Mannliche Kat. p. 29 seq.

[9] Friedrich, A. Z. May 3, 1871. Tagebuch, p. 147 seq. Döllinger, l.c.

§ 8.

Our opponents appeal likewise to the Councils of Constance and Basle. But these Councils were never occupied with the question at present under consideration.[1] The decrees of the Council of Constance referred to as declaring the Council above the Pope are not included by the Council amongst matters of faith, and have regard only to the case of a schism; by many contemporaries the application of their meaning was limited to those cases in which it was doubtful who was the legitimate Pope. But in fact they have none of the value of the decisions of a General Council. They were arrived at without due consultation, and by voting according to nationality, which was forbidden by the church legislation. The party of the unlawful Pope John XXIII., who had convened the Council, was alone

represented there. Its decisions are opposed to those of the Second Council of Lyons, of the Council of Florence, and of the Fifth Lateran Council, by which last they were condemned and repealed. Only when, some time later, the lawful Pope Gregory XII. convened a Council, then resigned his dignity, and Martin V. was duly elected, could the assembly form a regular General Council. Martin only ratified those things which the Council had defined upon matters of faith in a conciliar manner.

The Council of Basle, which a writer of that day rightly called a seed of heresy,[3] was headless and schismatical, and never met with acknowledgment from the Church. Eugenius IV. confirmed the holding of the Council, but only under two conditions, neither of which was fulfilled. These were, first, that everything that the Council had done contrary to the authority of the Apostolic See should be declared null and void; second, that his legates should have the virtual presidency. He never, however, ratified the canons of this assembly.[4] The Holy See has never, as some pretend, granted to the German nation the right of not believing in the infallibility of the Pope. Only some of the Basle canons, upon matters of discipline, were by negotiations with the Holy See granted to the German nation.

[1] Bouix, de Papa, t. ii. p. iii. p. 498 seq.

[2] Bouix, t. i. pp. 499-530.

[3] Traversar, Epist. ed. Flor. 1759; t. ii. p. 50: 'An vero Ephesina Synodus est quam ista nocentior? Quis hoc sapiat, nisi plane desipiat? Non ex illa tantum perniciosi erroris, non majus seminarium haeresum effluxit, quam ex hoc furiosae multitudinis factione provenit. Et veretur sanctissimus Dominus N. segregariae isti turbae opponere ejusque vesaniam apostolica auctoritate comprimere ac noxia illius germina evangelica falce praecidere?'

[4] The Basle canons extended immoderately the resolutions of the Council of Constance, applying them to the undoubted and lawful Pope; on which account Eugenius IV., Const. Moyses vir Dei (Rayn. a. 1439, n. 29; Du Plessis, t. i. p. ii. p. 239) declared: 'Ipsasque propositiones .... *juxta pravum ipsorum Basileensium intellectum*, quare facta demonstrant, veluti SS. Scripturae et SS. Patrum et *ipsius Constantiensis Concilii sensui contrarium* nec non praefatam assertam declarationis s. privationis sententiam cum omnibus inde secutis et quae in futurum sequi possent, tamquam impias et scandalosas nec non in manifestam Ecclesiae Dei scissuram ac omnis eccl. ordinis et Christiani principatus confusionem tendentes ipso S. approbante Concilio (Flor.) damnamus et reprobamus ac damnatus et reprobatus nunciamus.'

§ 9.

In the third chapter of the dogmatic Constitution of the Church of Christ the Vatican Council declares: 'That they err from the right path who assert that it is lawful to appeal from the judgments of the Roman Pontiffs to an Ecumenical Council, as to an authority higher than that of the Roman Pontiff.' This has long been established by the Church. Martin V. forbade such an appeal at Constance,[1] whereby alone the canons previously resolved upon were rejected. His successors have repeatedly done the same thing.[2] Especially Pius II. and Julius II.[3] If the decision of a Pope cannot be appealed against to a Council, it must in itself be final and unalterable. A final and unalterable decision in matters of faith must be infallible: otherwise we should have no certainty, and the infallibility of the Church would be an illusion. The definitions in matters of faith of a General Council have always been acknowledged to be infallible. If the decisions of the Roman Pontiff were not also infallible, an appeal from him, the fallible judge, to a Council, an infallible judge, could never have been forbidden. Nature and reason would both have been against it.[4] It would have been tyranny over men's consciences to oblige them to accept the decisions in matters of faith of a fallible Pope from whose judgment no appeal was permitted. If a Papal decision could be rejected as not final, schism, that is separation, from the Pope would be allowable in the Church; the Church's unity would be exposed to danger, and the faith of the Christian to uncertainty; the successor of St. Peter could then in no true sense be called the centre of unity. Bishops are bound to follow the Pope as their Head and Teacher; they are under the obligation of obedience to him.[5] Were the decisions of the Pope not infallible and final, any bishop might contradict them, and would at the same time be bound to opposition and to obedience. Thus in the ancient principle, that there is no appeal from a Papal decision to a higher authority, the doctrine of the infallibility of the Pope is clearly contained. It is in no wise a 'new doctrine;' it is only the doctrine of the Church newly offered for belief as not

of the revealed truth; until the definition of the Vatican Council the contrary view had been tolerated, but not more than tolerated. It is not true to say that before the 18th July 1870, the doctrine of Papal Infallibility had been 'for centuries a mere opinion of the schools, quite freely defended and quite as freely attacked.'[6]

[1] Const. 10 Mart. 1418, Mansi, xxvii. 1199. Du Plessis, Coll. Judic. t. i. P. ii. pp. 215, 216.

[2] For instance, the appeal of the clergy of Rouen and of the University of Paris, under Calixtus III. (Raynald. a. 1458, n. 55); that of the Duke Sigismund of Austria and of the Archbishop of Mayence (Raynald. a. 1460, n. 23; a. 1461, n. 16, 21); that of the Venetians against Julius II., and others.

[3] Pius II. Const. Exsecrabilis, 1459, Bull. i. 369. Gobelin, ap. Hard. ix. 1441. Rayn. a. 1460, n. 16. Julius II. Const. Suscepti regiminis, Bull. i. 501.

[4] Canus, de loc. Theol. l. v. c. vi.; l. vi. c. vii. Cf. Zaccaria Antifebr. l. iv. c. v. p. 37 seq.

[5] The Sorbonne also frequently expressed the duty of obedience for all.

[6] Berchtold, P. vi., who appeals to Bossuet as a good Catholic. He proved himself so in many excellent writings, but not in his line of action after 1682. He was not blamed for having confined himself in his controversy with the Protestants merely to the recognition of the 'dogmata expressa.' His Defensio Declar. Cleri Gallicani, left unfinished by himself, first appeared thirty years after his death with many interpolations. His Mandement of August 16th, 1699, retracted many things (Université Catholique, April 1852, livr. lxxvi. Cf. Bausset, Vie de Bossuet, l. x. c. xxi.).

§ 10.

The famous divines of the thirteenth century, whose adhesion to the doctrine of Papal Infallibility is admitted by our opponents, are supported in their belief by the theologians of the twelfth century. St. Bernard says: The authority of the Papal decrees is unalterable. Any injury to the faith should be repaired there, 'where the faith cannot fail, for this is the privilege of the Apostolic See.' Until the middle of the last century the doctrine of infallibility was received universally except in France.[1] And even in France its supporters were not insignificant.[2] The theological faculty of Paris long upheld this doctrine, and only embraced the contrary opinion in consequence of severe measures, particularly the dismissal of several of its members who were

most friendly to the Popes. The history of this faculty is a proof that professors, 'men of learning,' as such afford no security for the maintenance of the purity of the faith.[3] In 1661 the Archbishop Peter de Marca, who was affected with Gallicanism, said in a treatise which he dictated from his deathbed: 'The doctrine of Papal Infallibility is the only one accepted and taught in Italy, Spain, and other Christian lands, therefore the contrary opinion of the schools is only tolerated. The majority also of French jurists and theologians accept this doctrine, and hold the opinion of the Sorbonne in derision.'

The fallibilist doctrine, in opposition to the teaching of the Church, was permitted as long as there was no final decision on the subject. But a denial of the infallibility of any individual Papal decision on doctrinal subjects was never allowed. The Head of the Church has always required submission to its decisions on matters of faith. The contrary opinion has been several times disapproved, as is shown by the propositions already cited which were rejected by Innocent XII., Alexander VIII., and Sixtus IV., as well as by other decisions.

In Germany until the middle of the last century the doctrine of Papal Infallibility was universally acknowledged. Gallicanism and the fallibilist doctrine met with no representatives under imperial or princely patronage until after the publication of the work of Febronius in 1763. It was furthered by the influence of rationalism. In 1767, Kauffmanns, a theologian of Cologne, was still able to say: 'The fallibility of the Pope has been taught by no German, Flemish, or Belgian bishop in synod or pastoral, nor by any public school in Northern or Southern Germany.'[4] And in modern times the University of Louvain,[5] and the Colleges of Prague,[6] Cologne,[7] Ingolstadt, Würzburg,[8] and others, have defended the doctrine of Papal Infallibility. It has not been defended by Jesuits alone, but by their contemporaries in other orders, as well as amongst the secular priesthood,[9] under the eye of princes, bishops, and the whole clergy. Until Febronius, Protestants always held Catholics to believe the infallibility of the Pope. Especially in Austria, the contrary doctrine was chiefly introduced by State authority, which

ordered new school-books and catechisms.[10] And precisely in the degree in which men departed from Catholic principles did they combat the doctrine of infallibility; and as they returned to be of one mind with the Church, in the same proportion did they cling to the old doctrine. This is shown by numerous provincial synods, held quite of late years, which have declared the infallibility of the Pope's office of teacher. For example, the Synods of Cologne in 1860, of Rheims in 1857, of Colozka in 1864, of Westminster in 1852, of Baltimore in 1843 and 1852, and of St. Louis in 1835 and 1858.

Thus the doctrine now declared of faith and binding for ever upon all Catholics, the infallibility of the teaching office of the Pope, is not new. It would be much more true to call the fallibilist doctrine new—a doctrine contrary to the teaching and practice of the Church, and which has only been now and then, and here and there asserted.

[1] Bened. XIV. Ep. ad Inquis. Hispan. 1748, Opp. xv. 117, ed. Venet.

[2] Amongst them were: Andr. Duval, M. Maucler, Coesseteau, A. Charlas, the Benedictine abbot Petitdidier—who in the introduction to the work De Auctoritate et Infallibilitate Sum. Pont. expresses the firm conviction of the supporters of Papal Infallibility, that if the question were submitted to an Ecumenical Council for definition, in which 'cuique *libere* mentem suam aperire licitum foret' (which in France at that time was not the case, owing to the oppression of the Government), it would decide in favour of the Pope. Tournely also feels himself circumscribed by the despotic theology of the court.

[3] Truly astonishing is the representation made by the Paris Faculty to Greg. XIII. against the reformation of the Calendar (Du Plessis, t. ii. P. i. p. 453 seq.), in which 'mathematici et astrologi' are called detestable in the opinion of the old imperial laws, and a new time for Easter was represented as prejudicial to the Catholic Faith. It was contradicted later that this document belonged to the Faculty. It belonged at any rate to several of its members (cf. Op. cit. i. Append. p. xxiv.).

[4] Pro Statu Ecclesiae Cath. et Leg. Potestate Romani Pontificis Apologetic Colon. Agr. 1767, p. 151.

[5] The 'Lovaniensis doctrina' is combated especially in the Defensio Declarationis Cleri Gallic. Cf. Reussen's Syntagma Doctrinae Theolog. Adriani V. Lovan. 1862, p. 152. Bouix, l.c. t. ii. pp. 111-120. The University of Louvain has in our day expressly petitioned for the definition of Papal Infallibility, which it has always supported.

[6] As early as the opinion against Huss (Du Plessis, i. ii. p. 162): 'Communitas cleri .... semper tenet et credit fideliter sicut Romana

Ecclesia, et non aliter, quod in omni materia Catholica et ecclesiastica standum est fidei, sententiae et determinationi Sedis Apostolicae et Rom. Ecclesiae, eo quod Papa existens caput et collegium Cardinalium existens corpus Rom. Ecclesiae sunt in officio ecclesiastico cognoscendi et deffiniendi causas ecclesiasticas veri successores principis Apostolorum Petri et aliorum Apostolorum.'

[7] Zaccaria, Antifr. Vind. diss. v. c. ii. n. 3, upon the censure of 1618 of M. A. de Dominis; also 1765, the condemnation of Febronius.

[8] Henricus Kilber, in Theol. Wirceburg, t. i. Wirceb. 1771, disput. ii. c. iii. a. 4, pp. 496-530. J. Neubauer, Vera Religio Vindicata, Wirceb. 1771, diss. viii. sect. 1, p. 342.

[9] Amongst them the Benedictines Gallus Cartier (Auctoritatis et Infallibilitas Summorum Pontificum, Augsburg, apud A. M. Heiss, 1738, 4) and Celestine Oberndorffer (Theol. in usum Frising. Lycaei, 1762), the Capuchin Thomas ex Charmes (Theologia Universa, Nantzig, 1755, ed. 2, vol. i. p. 347 seq.), Canon Eusebius Amort (Theol. Aug. et Wirceb. 1752), the Minorite Anton Wissingh, Prof. in Treves (Medulla Totius Theologiae, Treves, 1695, seq. 336, Rump. p. 15).

[10] Lonovies, Der Josephinismus, Vienna, 1851. Beidtel, Untersuchungen uber die Kirchl. Verhältnisse in den Osterr. Staaten (Researches into the Condition of the Church in Austria), Vienna, 1849. Rive, Die Unfehlbarkeit des Papstes, Paderb. 1870, p. 130 seq.

Part III. Political Effect of the Dogma.

§ 1. That the dogma injures civil allegiance was asserted by the Jansenists and the opponents of the Vatican Council, but not proved. § 2. Conduces rather to the peace and prosperity of the State. § 3. Why the doctrine not long ago recognised as dangerous? § 4. The change not in the Church but in the State.

§ 1.

The third charge laid by its opponents against the doctrine of infallibility is that it is injurious to civil allegiance. There is nothing new in this, for the Jansenists asserted it also, and even the mode of proof adopted by the opponents of our day is borrowed by them from the Gallicans. Through Colbert, Le Tellier, and De Lyonne, the Jansenists succeeded in persuading Louis XIV. of France that the doctrine of the infallibility of the Pope imperilled his throne. The Advocate-general Talon was well served by the Jansenists, and by his management the parliament required the theological faculty not to defend any doctrine in which the infallibility of the Pope was either directly or indirectly contained. And as the faculty refused to accept

this decree, compliance was forced upon them in these terms: 'Every subject of the king is bound to submit absolutely to any order issuing from the courts of law.' We too have seen the dogma of the infallibility of the Pope declared incompatible with civil allegiance;[1] we have heard it said that it has completely transformed the Church, and made it impossible that any State should recognise her without political suicide!

The proof of the political dangers arising from the doctrine of Papal Infallibility is founded upon those perversions of the Church doctrine with which we have been dealing; false inferences have arisen from false propositions. If the definition of the 18th July 1870 be dangerous to the State, the Catholic Church herself must be so, and that, not from this date, but from the beginning. For the Church has always claimed infallibility. It is admitted that the infallibility of a General Council has always been believed in the Church; and this would have been equally prejudicial to civil obedience with the infallibility of the Pope. Only those who hold that the doctrine of the Church is hostile to the welfare and wellbeing of society[2] could bring forward such a charge. Were not the decrees of the Pope always considered binding, and was not obedience to them always required from the faithful? What difference, then, is it to the State that since the 18th of July 1870 these decrees in matters of faith are pronounced infallible, when before that date they were practically binding and compelled obedience? Every supreme court claims the right of making a final judgment, with which all must rest content and from which there is no appeal; by a necessary legal fiction it claims a kind of infallibility (formal as opposed to material infallibility). This kind of infallibility was without hesitation attributed to Papal decisions; there could be no appeal from the judgment of the Pope. But if this formally unassailable judgment is for Catholics also materially unassailable, this concerns purely the internal domain of faith, and has nothing to do with the State. Injurious consequences might equally follow merely formal infallibility.[3] For example, certain sects have dogmas forbidding them to take an oath or fight in war. The State does not care

whether the authority which promulgates these dogmas reckon itself infallible or no; it is only concerned with them in their relation to civil life. Let any one point out one single actual dogma of the Church which is dangerous to the State. Of all the opposition writings, which repeat the charge over and over again, not one can substantiate it. The possibility of the abuse of Papal Infallibility is their strong point. But this for Catholics implies a contradiction. For the infallibility of the Pope rests upon the assistance of the Holy Ghost, which excludes all possibility of its abuse; it has reference to the doctrine of the Church in faith or morals founded upon truths divinely revealed, which can never be dangerous to the State. The Church cannot 'make new doctrines at pleasure;' she can only develop, explain, and confirm those doctrines which are hers already, derived from the sources of revelation, Scripture, and tradition. It is therefore quite as impossible that the State should be endangered by an abuse of the teaching office of the Pope as by any of the truths of revelation. Papal decrees did not first become infallible on the 18th July 1870, but were then universally declared to be so; they really were as infallible before that date as afterwards. And in all the ages of Christianity not one single instance of the abuse of this power has been established. It is a matter of complete indifference to the State whether a Papal decision be in itself infallible, or whether, as Gallicans taught, it becomes so only when it has received the consent of the Church; for the consent of the Church can never be wanting to a Papal decision, since the Pope and the bishops can never be separated. If individual bishops act in opposition to the Holy See, the State gains nothing but a schism, which is productive of good to no country. Papal Infallibility extends no further than the infallibility of the Church;[4] it is, in fact, one and the same. According to the words of the Vatican Council, the Roman Pontiff, 'is possessed of that infallibility with which the Divine Redeemer willed that His Church should be endowed.' If this is fraught with danger to the State, the infallibility of the Church must have always been so. The definition leaves us thus. Either we are Catholics, in which case

we cannot hold that danger to the State can arise from the doctrine of the Church regarding faith or morals, and we must submit to the decisions of the Church; or we are no longer Catholics, and reject the doctrine of the infallibility of the Church as well as of the Pope. He can possess no claim to be called a Catholic who, after the definition of the Council, after the agreement of the assembled bishops with the Pope (which even Gallicans admitted to be without a Council sufficient to establish a doctrine of the Church), refuses to believe, not merely the infallibility of the Pope, but also that of the Council, the episcopate in union with the Holy See. Frohschammer has truly said: 'If you hold the Pope to be fallible, you cannot maintain the infallibility of the Church.' The Protestant Hase acknowledged that 'every argument against the infallibility of the Pope deals a blow underhand to the infallibility of the Church.'

[1] Döllinger, Erklärung, 18th March 1871. A. Z. 31st March.
[2] Syll. Prop. xi. Enc. 9th Nov. 1846, and Alloc. 20th April 1849.
[3] Beidtel, Das Canonische Recht, p. 62 seq.
[4] It is quite a groundless assertion that the idea of infallibility was unknown to the early Church. For (1) it is clearly denoted when, as is done in Scripture and the writings of Irenaeus, the teaching of those who preside over the Church is declared to be binding, absolute truth, the word of Christ, and an inviolable rule. (2) The word ἀσφάλεια is not wanting, and is an exact equivalent for the Latin 'infallibilitas.' It is only necessary to point out Theodor the Studite and Greg. II. (Ep. 1, ad Leon. Is.), who use the adverb ἀσφαλῶς, or the adjective ἀσφαλές, in this sense.

§ 2.

But let us ask—would the minds now so sorely troubled be at rest if the Pope were fallible instead of infallible? As Head of the Church he could, in the former case, bind the faithful to obedience as well as in the latter case; but Catholics could not with equal tranquillity of mind submit to his decisions. It conduces far more to the welfare and peace of the State that any disputes which may arise between Catholics should be forthwith and once for all settled than that a decision of the supreme teacher of the Church could be met from one year's end to another with objections of material error. A Church not under

the direct guidance of God might cause anxiety to the State; the definition of the 18th July 1870, far from occasioning such anxiety, dispels it. Had the Pope been declared fallible, then indeed cause would have existed for apprehension of an abuse of the power which, in his office of supreme teacher, he would still have possessed. Since, however, it was defined by the Church that whenever he exercises his office of supreme teacher he is directly assisted by the Holy Ghost, any apprehension of this kind is excluded.

The Church can never break with her past history. She can never define a dogma in opposition to what she has always believed. Otherwise all our Lord's promises to her would be unfulfilled, and she would be lost. 'The same Holy Spirit,' wrote Bossuet to Leibnitz, 'who prevents the Church from diminishing the faith, guards her also from adding to it (anything heterogeneous); therefore she must have been preserved as well from useless as from erroneous definitions.'

By the definition of Papal Infallibility the Church has given its deathblow to Gallicanism, and has brought fresh proof of her own wonderful vitality and unity in conflict with the few opponents who have appeared now as on all similar occasions. Civil authority, as ordained by God, has nothing to fear and much to hope from such a Church. True Catholics make no revolutions; they are the victims of revolutions which others excite. They yield a faithful and inviolable obedience to authority, not from fear or favour of men, but because such is the will of God, who has ordained it. If, however, anything is required of them contrary to their creed or their conscience which cannot be lawfully done, especially not by a government pledged to allow liberty of conscience, then, relying upon the words 'We must obey God rather than men,' they offer, and must offer, a passive resistance, but even then nothing more. Popes would rather lose their throne than dispossess a lawful prince; their deeds and words have never been revolutionary, but are always directed to the maintenance of order. 'The enemies of the Church,' the Pope said in a speech in 1871, 'are afraid of the priesthood, are afraid of good Catholics, are afraid of the preach-

ing of the Word of God, but they have no fear of the sects which are eating away the heart of society, subverting thrones, and destroying social order.' They seek to conceal dangers which are close at hand from other sources, and designate the Church, with its Papacy, orders, and priesthood, as inimical to the State. They impute all manner of pretensions to the Popes, and assert it to be probable that at some future period these pretensions will be 'made dogmatic;' hence they conclude that the dogma of infallibility is dangerous to the State, and that those who believe it cannot be good subjects. But in truth not merely the infallible teaching office of the Pope, but the whole of positive Christianity, is incompatible with that liberal State absolutism which acknowledges no right save its own.

§ 3.

Did the Church lose her identity by the definitions of the Council of Trent or of any earlier Council? Has she not the right to declare that a doctrine not always expressly held to be so is part of the revealed truth? Was this her right only during the first ages of Christianity? Has she lost the right to decide any dispute or question which may arise upon the truths of revelation? Yet she is said now to have lost her identity because, retaining all former articles of faith, she has brought forward another which is new not in substance but only in form, because she has drawn the logical conclusion from long-existing decrees, because she has decided a dispute of long standing, and issued a positive decision about the bearer of that infallibility which has always belonged to her. Why was not this doctrine considered dangerous to the State in old times? It was not found to be so either by the Kings of Spain and Portugal, or by the Emperors of Germany; not by the dukes and electors of Bavaria, nor by the ecclesiastical princes of Germany, although it was maintained before them openly, both verbally and in writing; nay rather they took it for granted, since they besought the Holy See for dogmatic definitions, and styled the Pope interpreter of the decisions of God and in-

fallible teacher;[1] they never put a stop to the use of catechisms in which this doctrine was taught.

The united Church of the Palatinate is an instance of a Church which may truly be said to have 'changed,' for in its new Protestant catechism it discards the fundamental doctrine of the Trinity. This has met with no opposition, and though scarcely now entitled to the name of Christian in the old sense of the word, no one has called this Church a 'new Church,' 'which has not, therefore, yet been recognised by the State.' Yet this has been said of the Catholic Church, although the Church which the State recognised as Catholic had the Pope at her head and the bishops in union with him for her pastors. This is the one Catholic Church. Whosoever casts himself from the rock of the Church separates himself from his lawful pastors, and refusing obedience to the Church, is no longer a Catholic. He may call himself Jansenist, or Döllingerite, or what he will; but Catholic he is not, neither old Catholic nor new, for that is a contradiction in terms. Catholic means universal, in time as well as in place. Was the Church recognised as the Catholic Church ever separated from the Pope and the lawful bishops? Was the Jansenist sect, to which the new opponents of the Church have joined themselves, ever recognised as the Catholic Church?

[1] Vide a letter of the converted Duke Rudolph Max of Saxony, the 27th May 1628 (Hortus Pastorum Auctore J. Marchontio, Colon. Agr. 1699, p. 193).

§ 4.

No, the Church has not changed; it is the State which has changed, for it now contests and denies to the Church the rights it once recognised as hers; it foments and favours schism and makes new laws to her disadvantage, until by grasping more and more at theological jurisdiction, and by usurping the office of supreme judge in matters of faith, it is pressed onwards to a denial of Christianity.

But the Church is said to have become dangerous to the State because she has now declared theoretically as an article of faith that which in practice has long been acknowledged. But is

she to be denied all further development,[1] whilst the State is to follow out to their remotest consequence the principles contained in itself? The Pope, unfettered from without, has always in all ages guarded the rights of the Universal Church from encroachment from the various States. Why should the *doctrine* be thus feared if the *practice* has not proved dangerous to the State?

The fact is people argue upon a misconception. They talk of Papal omnipotence and a deified Pope instead of an infallible teacher invested with full powers. From this distorted doctrine they draw inferences even more strange. The misrepresentations have been already exposed. The false suppositions and inferences will be examined in detail in the following essays.

[1] Even the Paris theologians had in 1324 declared that it belonged to the Church of Rome to decide what things were to be held as of faith, she being the universal rule of Catholic truth (Du Plessis, t. i. P. i. p. 222): they had petitioned John XXII. in 1333 for a definition on the controversy about the 'visio beatifica' (ib. p. 318); and in 1388 one of its members attributed to the bishops in matters of faith an auctoritas inferior et subordinata binding only secundum quid; but to the Pope, the summa simpliciter et absoluta (ib. P. ii. pp. 76, 84-86). John of Paris (died A.D. 1304) described the Pope as the 'superior in spiritualibus, per cujus sententiam controversiae terminentur' (de Pot. Reg. et Pap. c. iii.), and declared himself ready to retract, if anything contrary to his doctrine were shown to be determinatum per sacrum canonem aut per Ecclesiam aut per generale Concilium *aut per Papam, qui virtute contenet totam Ecclesiam* (Du Plessis, 264).

ESSAY III.

THE VATICAN COUNCIL.

CATHOLICS have ever held to be infallible a General Council lawfully convoked—that is, that a Council representing the whole Church, and dealing with decisions on doctrines of faith and morals, cannot err. Every catechism teaches this; it is contained in the thirty-nine articles published by Martin V., treating of the followers of Wickliff and Huss,[1] as well as in the creed of Pius IV., which is in universal use.[2] Any one who opposes the decrees of such a Council has cut himself off from the Catholic Church. Moreover, as has been already shown, though no Council had been held, the dogma of the infallibility of the Pope in his office of teacher would still be certain, even according to Gallican teaching, from the fact that the Pope and bishops agree in proposing this dogma to the faithful as a doctrine of faith, thus proving the agreement of the whole teaching Church. For it is the universal Catholic doctrine that the faithful are bound to believe all that is taught and proposed to their belief by the Pope and the bishops.

Let us now see (1) who are the adversaries of the Vatican Council; (2) what they allege against it; (3) what they propose in its stead.

PART I. THE OPPONENTS OF THE COUNCIL HERETICS.

§ 1. Their inconsistency in rejecting the dogma of the Immaculate Conception. § 2. Their grounds and principles throughout heretical, Protestant. § 3. Likewise their proceedings. Comparison with those of the Arians. § 4. Comparison with those of the Donatists. § 5. All heretics reproach the Church with being corrupt. § 6. Connection with Jansenism. § 7. Their want of unity in contrast with the unity of the Church.

§ 1.

The opponents of the Vatican Council reject also the dogma of the Immaculate Conception; but the dogma of the Immaculate Conception was defined in 1854, sixteen years earlier, and was only rejected by the *Janus* party in 1870. Either it was not known until then that this dogma ought to be rejected, or this was known, and silence was still maintained. The first supposition does small honour to the penetration and theological knowledge of the party, while the last represents it as hypocritical, and unfit rightly to instruct its contemporaries. Moreover, the Immaculate Conception had been already defined at the Council of Basle,[3] whose decisions concerning the Papal rights are revered by this party. Why, then, are not its decisions on the privileges of the Mother of God to be equally revered? In this case no Pope 'imposed' the dogma; the members of the Council alone proclaimed it. Had the Council of Basle been a General Council, the definition of Pius IX. in 1854 would not have been needed. Those who in 1870 for the first time suddenly rise up against this definition, and declare it to have been brought about 'by means of fabrications and falsehoods,' involve themselves in an endless contradiction, for whilst in the one case they take their stand upon the Council of Basle, in the other they are forced to reject it. In either case they do away with the whole authority of the Council of Basle by maintaining that it defined as an article of faith a doctrine founded on fabrications and falsehoods. If this be so, the Council of Basle should be more severely censured than the Popes, who waited more than four hundred years before making a decision. Moreover, before the definition, Pius IX. obtained in writing the opinion of the bishops and religious bodies, which was not done at Basle; and yet the Council of Basle is loaded with praise, and those decrees alone are rejected which are not found to be agreeable.

By such conduct the true character of the new Protestants is made known. With Luther they overthrow all authority of Councils;[4] they believe only so much as pleases them; they believe not God and the Church, but their own judgment and

their own self-will.[5] They will be forced at last, as a layman expressed it at the new Protestant meeting at Munich in 1871, to go back as far as, or even farther than, the reformers of the sixteenth century, 'to primitive Christianity, not to Councils, but to the time of Christ and the Apostles.'

[1] Denzinger, Enchir. p. 194, n. 551-553.

[2] Ib. p. 294, n. 867.

[3] Sess. 36.

[4] Vide Luther's proposition condemned by Leo X., 1520 (Denzinger, Enchir. p. 223, n. 653): 'Via nobis facta est enervandi auctoritatem Conciliorum,' &c.; designated also by the Sorbonne as 'prop. schismatica et haeretica, si velit Scriptor licitum esse cuipiam Concilii legitimi auctoritati contradicere in iis, quae fidem et mores concernunt' (Du Plessis, t. i. p. ii. p. 372).

[5] S. Thom. 2, 2, q. 5, a. 3: 'Ille qui inhaeret doctrinae Ecclesiae tamquam infallibili regulae, omnibus assentit, quae Ecclesia docet; alioquin si de his, quae Ecclesia docet, quae vult tenet, et quae non vult non tenet, non jam inhaeret Ecclesiae doctrinae, sed propriae voluntati.' Aug. c. Faust. xiii. 3: 'Quod volunt, credunt, quod nolunt, non credunt, sibique potius quam divino Evangelio credunt.'

§ 2.

The opponents of the Council are completely Protestant in their point of view. In all their utterances may be traced the Protestant principle, which puts the subjective interpretation of the Word of God by individuals in the place of the living teacher, outwardly visible to all men. The 'Protesting Catholics' of to-day set against the definitions of a General Council their own subjective examination of its decrees; these they declare to be contrary to Scripture and tradition, and they revile the most glorious Council the world has ever seen as 'a false, flattering, and dishonest Synod, a godless Council,' and so forth.[1] The Protestants of the sixteenth century brought precisely the same charges against the Council of Trent, and often with less violence.

But how would disputes ever come to an end if each individual was free to set aside the decrees of the Church on the plea of following Holy Scripture, in other words, his own fancies about Holy Scripture? If a Council be confirmed by the Head of the Church, this fact alone is sufficing proof that it is a gather-

ing of the rightful Church, the pillar and groundwork of truth (1 Tim. iii. 15). It is true that we are to prove spirits, whether they be of God (1 St. John iv. 1), and Christ teaches us the same when He warns us to beware of false prophets (St. Matt. vii. 15). But we have sufficing proof that a doctrine is from God if it be proposed to us by our rightful teachers and by the chief pastor, especially if it be confirmed by the agreement of the remainder of the bishops of the Church.[2] If a man refuses to submit to these, and claims a right of passing judgment upon his judges, he renders no obedience to the decrees passed by the authorities of the Church, through whom it is the will of the Holy Spirit to teach us; in his pride and obstinacy he disregards the means given us by the Apostle for the proving of spirits, and in this he proves himself to be a heretic. All teachers of error have thus sought to examine by the letter of Scripture the truths proposed by the authorities of the Church to the belief of the faithful, while they have ever maintained that they were keeping strictly to the teaching contained in Scripture. In the same way the opponents of the Vatican Council desire to test the decrees of the Council, and to set themselves up as judges over the Church assembled in her office of teacher, and over her decisions; and for this reason they are heretics, shut out from the pale of the Church.

The heretics of the present day maintain, as did those of old, that the Church, whose chiefs they have condemned, is not the rightful Church. But whose judgment is this? It is the judgment of the heretics alone; they look upon themselves not as heretics but as the true Church. But since they have been condemned in Council by the pastors of that Church, which before their time was esteemed by the whole world to be the true Church, and is still so esteemed by all men except themselves, it follows that if they persist in contradicting the Council they are heretics, precisely as were those who went before them.[3]

The Emperor Marcian, at the Fourth General Council at Chalcedon,[4] said: 'Whosoever still inquires further, after truth has been found, is seeking after a lie.'[5] He made a severe law, forbidding that any matter once decided and lawfully settled in

Council should be again made the subject of fresh investigations and disputes, and thus become a pretence for tumult or for stubborn unbelief. The opponents of the Vatican Council are precisely in the position of those early heretics, the Monophysites, against whom this imperial law was passed. And when they reply, as did Chemnitz to the Council of Trent,[6] that 'only when a decision has been *rightly* established is further discussion forbidden, and that the question is precisely whether the decision of the Council was *rightly* established,' they make themselves and their party the judges of the Council, and refuse to believe the teaching Church, preferring their own opinion and judgment. But in former days was it the judgment of the Council or the judgment of Eutyches, Dioscorus, and heretics which was to determine whether the decisions at Chalcedon were rightly established, and whether consequently truth was attained, and the decision placed beyond discussion? Marcian's law becomes utterly ridiculous unless it be admitted that the judgment of the Council was to be decisive. His intention was to forbid the disputations held by the teachers of heresy against the decision of the Council, in which they contended that the truth had not been attained nor a right decision determined upon. Accordingly he declared it to be impious, after the judgment of so many bishops, to rely still upon private opinion, and the height of folly, in full daylight, to desire another and an artificial light. In like manner, in the present day a question once determined by the Church in Council cannot be reëxamined by a small party of opponents in order to decide whether the definition has been rightfully made.

The new heretics behave towards the Vatican Council just as open Protestants, such as Chemnitz, and Protestants in disguise, such as Paul Sarpi, behaved towards the Council of Trent; their descriptions of it are most alarming, and quite at the beginning they expressed their extreme fear lest it should meet with general recognition among Catholics, a result which they have been, however, wholly unable to hinder.

[1] Döllinger, in the Allgemeine Zeitung, March 31, 1871, and others.

[2] Cf. Aug. de Bapt. c. Donat. iii. 19; also the works, De Utilitate Cr-

dendi and De Vera Religione; also Tertull. De Praescript., and Irenaeus, Adv. Haer., who says (l. iii. c. xxiv. n. 1): 'Cujus (Sp. S.) non sunt participes omnes qui non currunt ad Ecclesiam, sed semetipsos fraudant a vita per sententiam malam et operationem pessimam. Ubi enim Ecclesia, ibi et Spiritus Dei, et ubi Spiritus Dei, ibi Ecclesia et omnis gratia, Spiritus autem veritas.' L. iv. c. xxvi. n. 2: 'Qua propter eis qui in Ecclesia sunt presbyteris obaudire oportet, his qui successionem habent ab Apostolis . . . . qui cum episcopatus successione charisma veritatis certum secundum placitum Patris accesserunt, reliquos vero, qui absistunt a principali successione et quocunque loco colligunt; suspectos habere vel quasi haereticos et malae sententiae . . . . omnes autem hi deciderunt a veritate.'

[3] Cf. Athanas. Ep. ad Epictet. n. 1 (Migne, xxvi. 1052), on the opposition to the Council of Nicaea. The Sorbonne declared in 1521 in the censure of Luther (Du Plessis, t. ii. P. i. p. iii.): 'Nonne impium se prodit et infidelem, quisquis orthodoxae fidei, Ss. Ecclesiae Doctoribus ac sacris Conciliis credere dedignatur? Is nempe cui credit, qui Cath. Ecclesiae fidem habere detractat? Aut quomodo Catholicis adscribetur, qui Ecclesiam non audit, cum ex ore Veritatis dictum sit: Si Ecclesiam non audierit, sit tibi sicut ethnicus et publicanus? Porro ista est peculiaris haereticorum insania, ut Scriptura *pro voto* contorquentes *sese* eas *solos* credant intelligere, solos se ad veritatem Evangelii putent ambulare, solos se et quos falsa religione seducunt, salutem consequi arbitrentur, nec cujuscunque Doctoris, quantumvis sancti et eruditi, sed nec ipsius Ecclesiae auctoritatem suscipere velint contra eam, quam semel sibi praefixerint, Scripturarum intelligentiam.'

[4] L. iv. Nemo, i. 1, Cod. de S. Trinit.

[5] Conc. Chalc. act. vi. Mansi, vii. 170.

[6] Chemnitz, Examen. Concilii Trid. Praefat. i. part.

§ 3.

Moreover, in their whole conduct they imitate the heretics of old. They have forgotten the words of St. Cyprian: 'Whosoever is not with his bishop is not in the Church;'[1] and like the Donatist Petilian, they express the bitterest hatred against the Roman See, the centre of Catholic unity, herein differing widely from the best among the Gallicans.[2] They adopt an utterly heretical principle, in that they interpret passages of Scripture according to their own private judgment, and employ them contrary to the mind of the Church.[3] They act precisely like the Greek schismatics, who would have 'no addition to the Gospel,'[4] although many such additions were made, and necessarily made, in the early General Councils, if only in the sense of interpretation and more complete development (propositio explicita) of the

deposit of faith revealed from the beginning.[5] A wonderful likeness may be traced even in detail between the new heretics and those of old, especially the Arians. The followers of Arius opposed the doctrine that the Son of God is of the same nature with the Father, as not being contained in Scripture,[6] precisely as the infallibility of the Pope in his office of teacher is now opposed as unknown in the Bible. As of old the 'same nature' of the Son (Homoousios), so now the 'infallible Pope' is the distinctive sign and mark of true Catholics. The Arians were ever holding fresh assemblies[7] in opposition to the Council of Nicaea the object of their abuse,[8] but held in high honour by all the faithful of Christendom.[9] Precisely similar were the assemblies held in our own day at Nuremburg, Heidelberg, in the Crystal Palace at Munich, and in the hotel of the 'Great Greenfinch' at Vienna. The Arians attracted even unbelievers to their services and pseudo-councils,[10] and the meetings of our protesting Catholics are frequented by Freemasons of all sorts, by Protestants, schismatics, and Jews. St. Athanasius further declares, 'They suffer women and boys to take part in theological disputations;[11] they make poor jokes on holy subjects;[12] they recommend disreputable persons if only they further their heresy;[13] they rest entirely on the civil power,[14] before whom they calumniate the Catholics;[15] they contend exclusively with the Church, while with heretics they seek to be at peace;[16] they take less pains to establish their own doctrine than to vilify the doctrines of the Church;[17] few in number, all the greater is the noise they make;[18] inconstant and at variance amongst themselves, they often change their opinions,[19] and appeal to ancient teachers, whose meaning they misrepresent.'[20] Is not this the exact description of the new Protestants?

[1] Cyprian. Ep. 69, ad Florent. Pup. Cf. Ignat. Ep. ad Trall. c. i.

[2] Cf. *e.g.* Dissert. Praevia Declar. Cleri Gallic. § 1, with the expressions of the pseudo-Catholics of to-day.

[3] Athan. Or. l.c. Arian. n. 37, 52, pp. 348-360, ed. Maur. Basil. Ep. viii. c. iv. p. 88. Cyrill. Alex. Ep. ad Joh. Ant. Mansi, vi. 674.

[4] Schulte, iii. p. 2.

[5] Andr. Rhod. in Conc. Flor. (Hard. ix. p. 72 seq.), Bessarion, and others.

[6] Athan. de Syn. n. 36, Ep. ad Afros. Ep. n. 6, p. 715. De Decret. Nic. Syn. n. 1. Basil, Ep. 214, ad Terent. Com. c. ii.

[7] Athan. de Syn. n. 21, Ep. ad Afr. Episc. n. 10, 586, 718, ed. Maurin.

[8] Athan. de Decret. Nic. Syn. n. 18.

[9] Athan. Ep. ad Jovin. n. 2.

[10] Athan. Vita S. Antonii, n. 82, p. 686.

[11] Athan. Or. i.c. Ar. n. 1, 22, pp. 319-336 seq.; Or. ii. n. 18, p. 384.

[12] Athan. Or. i.c. Ar. n. 7, p. 325.

[13] Athan. Hist. Ar. ad Monach. n. 2, p. 278.

[14] Athan. i.c. n. 33, 34, p. 287; Or. ii. c. Ar. n. 43, p. 404.

[15] Id. Hist. Ar. n. 65, p. 302.

[16] Athan. Hist. Ar. n. 31, 32, p. 286.

[17] Basil. Ep. 214, ad Terent. c. ii.: *οἷς μία μελέτη ἐστὶν ἐν τοῖς ἐπὶ τῆς ἐκκλησίας λόγοις οὐ τὰ ἑαυτῶν παρασκευάζειν, ἀλλὰ τὰ ἡμέτερα διαβάλλειν.*

[18] Athan. Ep. ad Episc. Alg. et Lib. n. 7, p. 218.

[19] Athan. Or. ii. c. Ar. n. 40, p. 401.

[20] Athan. de Sent. Dionys. n. 1 seq. p. 191 seq.

§ 4.

Again, the new Protestants take exactly the same ground as the Donatists, who sought the true Church in their own land alone, that is, in Africa;[1] for they acknowledge the Church in Germany alone, and amongst the few foreign followers of the German professors, such as Loyson and Michaud. But is this small sect, which is almost wholly confined to one country, and which even there counts comparatively few followers, is this indeed the Church Catholic, which according to the judgment of the Fathers is known by this very mark—that she is spread over the face of the earth, that she exists where sects also exist, while they are not to be found in many places where she is?[2] The so-called Old Catholics may be answered to-day in the words addressed by Peter the Venerable to one of the Cardinals of the anti-Pope:[3] 'Either the Church, the sheepfold of Christ, in which are the sheep of the True Shepherd, is with us, in which case your sheepfold contains no sheep but only goats, whose place is on the left hand; or it is with you, and in this case the word of the Father is false in which He promised the Son, "I will give Thee the Gentiles for Thine inheritance, and the utmost parts of the earth for Thy possession" (Ps. ii. 8);[4] false is the voice of the prophet, "He shall rule from sea to sea, and from

the river unto the ends of the earth" (Ps. lxxi. 8); false likewise are the words, "All the peoples which Thou hast made shall come and worship before Thee, O Lord, and glorify Thy name."[5] All this is false if the inheritance and possession of Christ has indeed become so small that He now possesses only the towers of Pier Leone and the few small fortresses of the Count of Poitiers.' Döllinger indeed wrote,[6] 'Thousands amongst the clergy, hundreds of thousands amongst the laity, think as I do, and hold it impossible to accept the new article of faith;' but his pretended knowledge of men's hearts has come to shame. A few professors puffed up with learning; a few priests, many of whom were before not living the lives of priests; some men of culture so called, who, for the most part, had never been rightly instructed in the faith, or who had long ago thrown it overboard,—such in the main are the new heretics who have nominally been at such pains to guard the purity of the faith. Pastors without flocks, liberal magistrates, long non-practising Catholics, form now the stronghold of 'Old Catholicism,' and this little group presumes to call itself the true Old Catholic Church, and to designate the immense majority of Catholics, the Pope, and the united Episcopate as apostates!

[1] Aug. de Unit. Eccl. c. xvi.

[2] Cyrill. Hieros. Catech. xviii. n. 23. Vincent. Lerin. Commonit. c. iii. Optat. l. c. Theodoret, Haer. Fab. l. iii. c. vi. p. 347 seq. Aug. de Unit. Eccl. c. ii.: 'Illae quippe (sectae) in multis gentibus, ubi ista (Catholica) est, non inveniuntur, haec autem, quae ubique est, etiam ubi illae sunt, invenitur.'

[3] Petrus Ven. l. ii. Ep. 4, pp. 192, 193.

[4] On this text St. Augustine (De Unit. Eccl. c. viii. n. 20) says: 'Quis enim Christianus unquam dubitavit, hoc de Christo esse praedictum, aut hanc haereditatem aliud quam Ecclesiam esse intellexit?' Cf. Optat. c. Parmen. ii. 1.

[5] St. Augustine especially urges this against the Donatists—Brevicul. Collat. die iii. in Psalm lxxxi. 121, de Unit Eccl. c. ii. 25. He also says: 'Hoc ideo dicendum putavi, ut cognoscat eruditio vestra, periculosissime vos opinionem vestram totius mundi sententiae praeponere magisque superbae obstinationi paucorum, quam devotae unanimitati multorum acquiescere.'

[6] Declaration of March 28, 1871.

§ 5.

The history of the Church teaches that almost all heretics carried on their rebellion against her under the pretext that the ecclesiastical authorities had changed and transformed the Church of Christ, whether in doctrine or in constitution. Long ago, the ancient Gnostics declared that the Apostles had given the Gospel a Jewish interpretation, and they, wiser and more honest than the Apostles, desired to restore it according to the mind of Christ.[1] The Artemonites maintained, that since the time of Pope Zephyrinus (A.D. 202-218) truth had been corrupted in the Church.[2] The Macedonians in the fourth century pronounced the doctrine of the divinity of the Holy Ghost to be contrary to Scripture, and unknown in the primitive Church.[3] The Nestorians rejected the Third General Council (431) as incompatible with the first of Nicea; while the Monophysites rejected the Council of Chalcedon (451) as contradicting that of Ephesus and the teaching of St. Cyril.[4] The Paulicians, who claimed for themselves the name of the 'Catholic Church,' cast off at once the constitution and doctrines of the Church.[5] The same course was followed by the schismatic Greeks and the mediæval sects; and they rejected the Roman Church, as having fallen away from truth.[6]

But it is objected by some: 'According to the Fathers, the true faith may at least for a time be lost to the larger part of the Church, and an example of this is to be found in the history of Arianism.' But who may the Fathers be who speak thus? The Fathers declare the precise contrary. There is not a single one who says that the teaching Church can, even for a short time, fall into error; they all teach, with one voice, that the faith is the very being of the Church; that she is imperishable and incapable of error. 'The Bride of Christ,' says St. Cyprian,[7] 'can never be an adulteress; and the promise of Christ (St. Matt. xxviii. 20) extends to all days, even to the end of the world.' St. Jerome, indeed, on the occasion of the Council of Rimini, exclaimed: 'The whole world wondered to find itself Arian;'[8] but the words 'miratus est' (wondered) show clearly that

the outward appearance did not correspond with the actual reality; had Arian doctrines preponderated amongst Christians, the world could not have wondered to find itself Arian.[9] In truth, the Arians did not exceed the Christians in number; and only by the tyranny of Constantius (and later by that of Valens) was Arianism raised to the power, which it lost again as soon as the imperial protection was withdrawn. Many bishops bowed before it from compulsion and fear, as was proved at Rimini; even under Arian bishops the people often remained Catholic, which made St. Hilarius say that the ears of the people were more holy than the hearts of the priests;[10] they often understood the doctrine taught them in a Catholic sense. In the East, the whole people frequently fled to the desert, forsaking the Arian churches, and worshipping God amidst the greatest hardships, and under the open sky.[11] There was no lack, either in the East or in the West, of distinguished and resolute defenders of Catholic doctrine. The Council of Rimini gave merely an apparent and momentary success to the false doctrine; for in truth those bishops who had suffered their signature to be extorted from them by threats or by force remained in heart Catholic.[12] The court theology of Constantius perished utterly; the theology of the Church, even without the 'patronising interference of the State,' proceeds ever on its peaceful way.

[1] Iren. Adv. Haer. l. iii. c. xii. n. 12.

[2] Eus. H. E. v. 28, ex Auct. Anon.: ἀπὸ δὲ τοῦ διαδόχου αὐτοῦ (τοῦ Βίκτορος) Ζεφυρίνου παραπεχαράχθαι τὴν ἀλήθειαν.

[3] Naz. Or. xxxi. s.v. Theol. n. 21, p. 569. Leont. Byzant. de Sectis, act. iv. (Migne, lxxxvi. 1220).

[4] Leontius, l.c. act. vi. n. 3, 4; act. viii. n. 2 (pp. 1236-1252).

[5] Phot. c. Manich. i. 9.

[6] Everin of Steinfelden to St. Bernard (Du Plessis, l. i. p. 23): 'Dicunt apud se tantum Ecclesiam esse, eo quod ipsi soli vestigiis Christi inhaereant,' &c. Ekbert of Schönau, serm. ii. c. Cath. (ib. p. 45). Ramerius (ib. p. 56. Cf. p. 93). Theodor. Balsam. Resp. ad Marc. q. 15 (Leuencl. i. p. 370). Meditat. de Convocat. (ib. pp. 477, 478).

[7] De Unit. Eccl. c. vi.

[8] Hier. Dial. adv. Lucifer. The matter is treated in detail by Thomassin (Diss. Vin. Syn. Arim. § 1, p. 109 seq.), because, as he says, with this passage velut arieto novatores Ecclesiae toto orbe diffusae universitatem solent impetere.

[9] Thomassin, l.c. § 4, p. 111: 'Nempe id novum, id præter mentem et voluntatem suam esset, imo quod impossibile esset et tamen ita *specie tenus* esse videretur.'

[10] Hilar. c. Auxent. Liber. n. 6.'

[11] Basil. Ep. 92, al. 69, c. ii. p. 481.

[12] Thomassin, l.c. p. 113, seq. § 8.

§ 6.

The new sect deserves in justice the name of new Protestantism and new Jansenism. The teachers of false doctrine have ever borrowed weapons from the arsenals of ancient heretics, derived expressions from their writings, and sent them forth as something new;[1] and in like manner the German *Janus* party has borrowed its ideas and words chiefly from Protestantism and Jansenism. Protestantism took the pretended corruption of the Church as a pretext for separation; while Jansenism took as its pretext the darkness said to have lasted many hundred years. No wonder, therefore, that the new sect should even outwardly connect itself with the remnant of the old Jansenists. There is in the writings and conduct of the Jansenists and the Döllingerites a harmony which extends even to the smallest details.

The opposition raised against the definition when made, July 18, 1870, is precisely the same as that raised in France in 1713, against the Bull 'Unigenitus.' Both heresies fought against the definition of the Church as being dangerous to the State, and both appealed against it to the power of the State; both allied themselves with any powerful party which would make common cause with them against the Church; both attacked in particular the Society of the Jesuits, who had served the Church so well; both made use of the same means, odious imputations and suspicions against Rome. Here again are the same appellations, the same defenders of 'pure theology,' the same lamentations over the tyranny of bishops, the persecution of 'orthodox' priests, and the refusal of the longed-for sacraments to 'orthodox' laymen; then come complaints of want of clearness in the definition, and of its suspicious origin.[2] Now, as then, the question of right is separated from the question of fact. The 'Old

Catholics' would not for the world set themselves against a Council which is in truth general; but they contend that the Vatican Council was not truly general. They cannot perceive the dogma defined to be well founded and true; and therefore they oppose the Council which defined it. Again, they hesitate to acknowledge the Council as in truth ecumenical and lawful; and therefore they hold themselves to be freed from the believing submission to its decrees, which else they must acknowledge as due to the mysteries of faith, to those sublime truths which are far above human reason.[3] But this alone is sufficing proof that, whatever they may be, they are not Catholics.

Further, every Catholic has always been bound to believe, that the Church must be, now and ever, in her essence unchangeable, imperishable, and infallible; should she ever cease to possess these attributes, then she never was at any time the true Church. But the new Protestants have altogether lost the conception of the infallibility of the Church.

Moreover, a Catholic is bound to hold firmly, that a *real* contradiction between the teaching of the Church and science is not possible, and that there can be merely a *seeming* contradiction; if, therefore, he feel himself repelled by a definition of the Church, and find it hard for his reason to master, the error is to be sought on his side, and not on that of the Church. So said Döllinger as late as 1863.[4] No Catholic can or ever could say, as did a member of the Munich Congress (1871), that he was so deeply impressed with the truth of his own conviction, although rejected by the Pope and bishops, that even were he the only mortal man who adhered to this principle, he would never profess any other. This is, and always has been, the stubborn and unjustifiable pride peculiar to heretics,[5] which leads them to take their own judgment as their sole standard, and makes it certain that they will lose themselves in endless inconsistencies and contradictions.[6]

[1] Abbot Wibald writes (Ep. 147, p. 1250): 'Illi ipsi qui ob ignominiosam gloriam haeretici contendunt fieri, *non nova inveniunt, sed vetera replicant*, et superfluas verborum novitates, quas Apostolus devitandas

praecipit, quae multorum sunt correctione antiquatae, tamquam propria ratiocinatione inventas in contentionem adducunt.'

[2] Cf. these expressions with the Remonstrance du Parlement au Roi du 9 Avril 1753, *e.g.* 'Que ces voyes d'autorité si éloignées de l'esprit de la religion n'ont jamais été plus multipliées à son préjudice, qu'au sujet de la Bulle *Unigenitus*. . . . . C'est par la violence, que l'on soumet les fidèles à la Bulle *Unigenitus*. . . . . Quelle indétermination! Peut-elle se concilier jamais avec l'idée d'un jugement dogmatique, d'un jugement irréformable de l'Eglise universelle?' (p. 182.) 'Combien de curés fidèles à leurs devoirs n'ont été enlevés à leurs paroisses par des ordres, que le faux zèle de quelques évêques est parvenu à surprendre à votre Majesté! . . . . Quel spectacle affligeant pour la religion!' &c. Details on this subject in M. Gerbert, Op. cit. l. iii. c. vii. n. 13-15, pp. 535-544.

[3] The Faculty of Douay, in the Declaration of 1704, art. vi. § 4 (Du Plessis, t. iii. P. ii. pp. 436, 437), says: 'N. 3. L'infaillibilité de l'Eglise n'est pas fondée sur l'évidence de ce qu'elle propose, mais sur l'assistance du St. Esprit, et par consequent il ne faut pas rechercher *l'évidence* de l'objet pour lui soumettre son esprit. N. 4. Si l'infaillibilité de l'Eglise n'était fondée que sur *l'évidence* du fait, elle n'aurait en cela pas plus d'avantage que le dernier des hommes, qui ne peut aussi se tromper sur ce qui est évident. 10. Reconnaître un fait, parcequ'il est évident, n'est pas se soumettre à l'Eglise, mais à une nécessité naturelle, qui entraine l'esprit du coté de l'évidence.'

[4] Munich, Gelehrtenversammlung, 1863, Verhandlungen, p. 56. Cf. Conc. Later. v. et Pius IX. ap. Denzinger, Enchir. p. 219, n. 621; pp. 444-451, n. 1498, 1508. Const. Vat. Dei Filius, cap. iv.

[5] The words of St. Augustine apply here (c. Crescon. iii. 3), on the false view of heretical baptism taken by the early African bishops: 'Sicut laudabile est a vera sententia non amoveri, ita culpabile est persistere in falsa.'

[6] Cf. Tertull. de Praescr. c. xl. xli.

§ 7.

Again, the new heresy has another point in common with those gone before it. Logic and consistency have never been characteristics of heresy; on the contrary, it is inseparable from glaring inconsistencies and contradictions; and this feature is to be seen again among the new Protestants, or so-called Old Catholics. On the one hand, they no longer acknowledge the 'infallibilistic clergy' as being Catholic and lawful; on the other, they demand from them for their members ecclesiastical employment, and to be allowed to exercise the functions of parish priests. They reject an episcopate submissive to the fatal July decrees, but still they make appeal to a higher court of the same

episcopate, thereby acknowledging its jurisdiction; they seek to bind the Pope by ancient canons, from which they free themselves. The ancient law of the Church, that no priest may exercise ecclesiastical functions beyond his own diocese, unless by permission of the bishop, they have with sovereign power set aside. The Jansenist Archbishop of Utrecht, without scruple, exercised his episcopal powers in Bavaria as universal bishop. The parish duties discharged by the priests of the new sect should be considered precisely in the same light as though discharged by priests who have no parochial rights, and in places where such had never been granted to them.[1]

The 'Old Catholics' either are or are not excluded from the Catholic Church; they either do or do not regard the power of the State as forming a part of the Catholic Church. In the former case, as the Austrian Minister of Worship expressed it (Feb. 20, 1872), they must 'consider as lawfully entitled to perform the pastoral functions of the religious denomination acknowledged by law those priests alone who, by the existing laws and the agreements between Church and State, are known to be the regular pastors of the denomination;' and hence they cannot consider as valid the civil register brought in by the 'Old Catholic' clergy, who had no former rights in the parish; nor can they consider the marriages solemnised before them as binding. In the latter case they must take their stand on the laws existing for dissenters and other sects, unless they should join some recognised Protestant denomination. Moreover, the 'Old Catholics' vary much in their demands; some insist on a Church, as of right belonging to them; others need none, looking upon the whole world as their Church; some desire parishes of their own, properly organised; others perceive this to be 'a fatal course, beset with snares at every step;'[2] some say the infallibilist bishops and priests still form part of the Church, and are 'the rightful holders of Church authority;'[3] others consider them as wholly cut off from the Catholic Church, and as constituting an heretical Church; some have perceived that the State 'will never, in order to please a few dissenters, deprive of her rights and titles that Church which in the eyes of the w[l]

world has an unbroken succession, and the possession of an enormous majority of members and parishes, that Church with which the State long ago entered into close alliance;[1] others, on the contrary, have held this to be possible, and have straightway demanded that the Catholic foundations should be handed over to them as the rightful Church. On the one side they declare, 'We accept everything which was received in the Catholic Church up to July 18, 1870;' and on the other, 'We oppose not a single dogma alone, but the whole spirit by which for centuries Rome has been animated.'

Thus are the new Protestants at variance amongst themselves, and exhibit that distinctive mark of heresy, disunion; whilst at the very time of the Vatican definition the unity of the Catholic Church was once again most strikingly shown. In the last century Martin Gerbert wrote: 'What schism could be more terrible than that imagined by those who believe it possible for the bishops in Council to differ from the faith of the Roman Church? But they will ever agree in the same sentence, though differences of opinion may from time to time arise in discussion: for neither to the Pope nor to the bishops is a sudden inspiration given, but the determination to which they come after deliberation is, by the assistance of the Holy Ghost, firm and inviolable.' The head will never be divided from the members; and thus we see the entire unity of the episcopate with the head of the Universal Church, while those who set themselves against the Vatican Council have fallen under the excommunication pronounced by it, and have ceased to be Catholics.

[1] Vide Der Conflict zwischen Kirche und Staat in Bayern, p. 86 seq. 93 seq.

[2] Döllinger, Munich Speech, 1871, Report, p. 108.

[3] Döllinger, l.c. 109.

[4] Döllinger, ibid. 129, 130.

Part II. Charges against the Council.

§ 1. Pretended want of freedom of the Council. § 2. Letters on the Council and Friedrich's Journal. § 3. Pressure by the Pope and the Curia. § 4. Right of proposal. § 5. Right of definition. § 6. Order of business. § 7. Lay diplomacy. § 8. Charges against the bishops of the majority. § 9. Composition of the Council. § 10. Principle of majority. § 11. Representation and consent of individual Churches. § 12. 'Theologians' and public opinion.

§ 1.

What do our able opponents bring forward? First, they show great fear lest the acknowledgment of the Vatican Council should bring with it the downfall of the modern State, of the German empire, and, in general, of civilisation and true religion.[1] Another, on the contrary, writes: 'Whoever has courage to look calmly in the face the simply horrible caricature presented to us by the Vatican Council will at once lose all fear of its power and vitality.'[2] Wherefore, then, is so much pains taken to oppose that which is in itself 'powerless and incapable of life'? Hase (a Protestant) is right in saying: 'Had the dogma been withdrawn, or had it been rejected by the majority, the opposition would never have thought of calling in question the ecumenical character of the Council.'[3] The Council is not rejected on formal and juridical grounds, but only by reason of the dogma itself.

What, then, is the formal deficiency with which the Council is reproached? The answer is: Above all, the notorious want of freedom of the bishops.[4] The same reproach was once cast on the Council of Trent, but was refuted on all sides.[5] In order to prove the want of freedom of the Vatican Council, it would be needful to produce witnesses or documents, and moreover unexceptionable witnesses and documents above suspicion. Up to the present day no one has been able to do this.[6] Is, perchance, a French pamphlet, the author of which dares not even come forward with his name, and the contents of which have been branded as calumnious and lying by five hundred bishops,[7] to be reckoned as proof? Or the expressions of Lord

Acton,[8] too famous for his activity against the Council? Do the voices of the opposing minority alone carry weight, and not those of the majority, who, be it remembered, would always have formed a majority, even without the subsequent addition of those who were at first, from various causes, amongst the oppositionists? Do the assurances of all the bishops speaking with one voice—of those who were never troubled, and of those who for a short time saw cause for anxiety—do all these go for nothing?

The freedom essential to the Council is freedom of speech and of vote. This was fully granted, as even the antagonistic accounts prove without meaning to do so, when they report the more than frank expressions of the oppositionists.[9] If, on July 18, 1870, two bishops (who, however, on the subsequent definition immediately submitted to it) were able to give a negative vote, 'Non placet,' it surely would have been as easy, or even easier, for twenty or a hundred to have done the same.

Once only, on June 3, was the closing of the debate determined, and then it was on the motion of more than one hundred and fifty of the Fathers, and was carried by an overwhelming majority, in which were numbered many even of the 'opposition;' and this was done after the hearing of sixty-three speakers in fourteen debates, and with the reservation of the special debate, which lasted over four more weeks, and gave many more speakers an opportunity for a free expression of opinion. In truth at no time and in no place has there been such perfect freedom in a like assembly, nor so many occasions given for discussion.[10]

[1] Vide Döllinger, Allgemeine Zeitung, March 31, 1871, and others.
[2] Berchtold, p. 9.
[3] Hase, Handbuch der Prot. Polemik, p. 198.
[4] Döllinger, ibid. and others.
[5] Pallavic, Hist. Conc. Trid. l. xxiv. c. xiv.
[6] Cf. Ueber das Vatican. Concil. Mainz, 1871, ii. pp. 6-12. Schulte's publication, Das Unfehlbarkeits-decret. v. 18 Juli 1870, auf Seine Kirchliche Verbindlichkeit Geprüft (Prag, 1870), was shown in its true colours, by Bishop Fessler, in Das Vaticanische Concilium, dessen Aussere Bedeutung und Innerer Verlauf (Vienna, 1871).
[7] Cf. the Ratisbon Pastoral of Oct. 28, 1870, § 11.

[8] Cf. Frhrn. v. Ketteler, Die Minorität auf dem Concil. Antwort auf Lord Acton's Sendschreiben, Mainz, 1870. Archiv für Kath. Kirchenrechte, 1870, vol. xxv. p. cliii. seq.

[9] Histor. Polit. Blätter, vol. lxvi. p. 198 seq. Ueber das Vat. Concil. pp. 9, 10.

[10] Ratisbon Pastoral, Oct. 28, 1870, § 12, p. 46.

§ 2.

On what, then, is founded the calumny that the Council was notoriously wanting in freedom? On the letters on the Council in the *Allgemeine Zeitung*, and on the Journal (*Tagebuch*) of the Roman Council by Friedrich. These are the two sources, and they form in reality but one, as may be seen by any person who takes the trouble to compare the two. They echo each other and are composed of mere pitiful gossip, often repeated at second and third hand,[1] most shameful expressions being put into the mouths of anonymous witnesses, described as prelates, theologians, diplomatists, laymen, &c.[2] The Journal, moreover, indulges in insulting expressions about the highest dignitaries in the Church, such as can only have been dictated by the bitterest hatred.[3] But enough has been said of this book, which is highly praised by its party as 'an historical work.'

[1] Petrus Vener. l. ii. Ep. 33, p. 252: 'Habent vina hunc morem, ut de vase in vas frequenter transfusa a virtute naturali languescant; si recentia hauriantur, vini saporem integre servasse probentur. Sic verba per aures alienas aliorum cordibus committenda *referentium inscitia*, incuria, industria aut non intellectam aut neglectam aut depravatam quandoque augent, mutant, minuunt veritatem.'

[2] Many of the statements made are simply ridiculous. The Fosfori Infallibili (matches which never fail to strike) were not hawked about for the first time of late (Journal, p. 177), but many years ago. In one of the most important Basilicas, the Credo and Agnus Dei were to be sung on Holy Saturday (p. 331), while on this day both are omitted. Concerning the Roman Inquisition, he learns that it still believes that 'horses are made to prick up their ears by the holy souls; therefore the owners of these horses are to have chapels built to the holy souls on the spot.' He speaks in Latin with a chaplain; the auditors, especially the *ladies*, were nevertheless on his side (p. 329), &c.

[3] The bishops are flatterers (p. 51), perfidious (p. 137), ignorant (p. 244). He perceived as early as January 2, 1870, that the Council was to be a Synod of flatterers and thieves, 'which we theologians' (p. 251) could not acknowledge.

§ 3.

'But,' it is objected, 'the power of the Pope and of the Curia was contrary to all freedom on the part of the bishops.' What, then, was to be done? Were the bishops to be released from their oath of obedience to the Pope? Was the Pope, out of favour to the episcopal privileges, defended by a small number of learned men in Germany, to renounce rights founded on history and canon law? Was the disorder which prevailed at Basle to be again regarded as order? Surely the mere subordination of the bishops to the Pope does not destroy their liberty! Members of Parliament do not lose their freedom by taking an oath of obedience to the head of the State; and the oath of obedience taken by the bishops does not bind them to give a vote contrary to judgment and conscience.[1] The Council is not indeed a sovereign national assembly, with the Pope on the other side as president and chief of the executive power; the reason being, that neither the assembled bishops nor the Pope lose the rights and spiritual powers given to them by Christ.[2] As the bishops individually are all subordinate to the Pope, so when collected together they are not loosed from this subordination.[3]

[1] Raynald. a. 1560, n. 60; a. 1561, n. 6.

[2] Bossuet, Def. p. iii. l. vii. c. iv. t. xi. p. 9: 'Quum profecto Concilium nihil aliud sit, quam Cath. Ecclesiae repraesentatio, integris omnibus, quae cuique a Christo sunt, dotibus, non profecto sublatis, ne non repraesentatio, sed exstinctio ecclesiasticae unitatis esse videatur.'

[3] Cf. Bouix, De Papa, t. ii. p. 220.

§ 4.

In every large assembly the right of presiding is so far bound up with the right of proposing questions, that the president has to decide the order of succession amongst the subjects to be considered. But now our opponents deny to the Pope the right of proposing as well as the right of defining, and they make appeal in the first place to the Council of Trent. Every member of the Vatican Council, as of the Council of Trent, had the right of making proposals on the subjects under discussion; but, on the

other hand, in this as in the preceding Council, except by the presiding cardinals, no new subject could be proposed for discussion and vote. This rule was in fact maintained at Trent,[1] and the Fathers did not thereby lose their needful freedom, but confusion and disorder were avoided.[2] The Papal legates at Trent wrote at the time to the Emperor Ferdinand: 'Were each member suffered to make proposals at will the Council would never end; if the Spaniards exercise this right, so will the French, the Germans, &c. We have more than once told the Fathers that in case they desire a proposal made, they can lay it before the legates; and this has, as a rule, been done.'[3] In the Councils of the Middle Ages the Papal right of proposition passed unquestioned. The first Councils lawfully held in the East cannot be taken as affording a permanent rule, for at that time the emperor's extensive office of protector of the Church gave to the imperial commissioners the external direction of affairs, and, as a consequence, considerable influence.[4] As a rule, however, they were considered as distinct from the Council; thus the letter of the Fathers of Chalcedon to Leo the Great distinguishes the Papal power of presiding as that of the head over the members, and the power of the emperor as an honorary presidentship.[5] In conducting the business of the Council, the Papal legates took the initiative from the imperial commissioners, but they also afterwards conducted it with them, often in a most striking way, as is especially proved by the proceedings of the Fourth[6] and Eighth[7] General Councils. The fact that St. Cyril was Papal legate at Ephesus in 431 is disputed without reason, the very acts of the Council designating him as such.[8] Theodosius II. (431) forbade the imperial commissioners sent thither, to take part in the ecclesiastical inquiries and conferences.[9] From the fact that a Council which originally was not ecumenical may receive the ecumenical character from the Pope taking part in it, nothing follows as to the right of proposition in Ecumenical Councils; if a Council be convoked and held as ecumenical, still the right of proposition belongs to the Pope. It cannot be taken as proof to the contrary that at Chalcedon the 28th canon was unlawfully brought in and accepted by the

bishops who were servile to the court of Byzantium; for the Pope as well as the legates protested against it, and the Orientals until long after only reckoned twenty-seven canons of Chalcedon.[10] In later times, the ambition of the Byzantine court once more brought forward the canon rejected by Rome, much as the Gallicans have once more brought forward the Declaration of 1682, annulled by Louis XIV. in 1693.[11]

The condemnation of Honorius at the Sixth Council, before the Roman legates were prepared for it, was the result of pressure on the part of the Greeks; his guilt consisted, as Pope Leo II. plainly declared, in negligence, by means of which heresy was strengthened. It must not be concluded that because the Roman legates did not oppose proposals originating on the other side, that they therefore conceded to it the right of proposition. Neither does it follow from the conduct of the legates that it must have been forthwith, and to its full extent, approved and ratified by the Pope. Often the legates were disavowed by the Pope, and blamed and punished for overstepping their powers.

[1] Bennettis, Privil. S. Petri, P. i. t. i. p. 514.

[2] Pallav. Hist. Conc. Trid. l. xxiii. c. xii. n. 7. Massarelli's remarks are made expressly of the general congregations, to which alone they can apply, since that which had been determined in them was only made public in the solemn sessions: 'Nemini enim licet nisi solis Praesidentibus proponere.' This last word, as Fessler observes (Das Vatic. Concil. p. 34, n. *), may mean: (1) to propose motions on subjects fixed for discussion; (2) to propose subjects for discussion and vote. The first, in the Vatican Council as in that of Trent, was the right of all members; the last, in both cases, was the right of the presiding Cardinals alone.

[3] Raynald. a. 1563, n. 32.

[4] Hefele, Conc. i. pp. 25-33.

[5] Leo, Ep. 98, c. i.: 'Quibus tu quidem, sicut membris caput, *praeeras* (ὡς κεφαλὴ μελῶν ἡγεμόνευες) in his qui tuum tenebant ordinem .... Imperatores vero fideles ad ornandum decentissime *praesidebant* (πρὸς εὐκοσμίαν εἶχον), ut Zorobabel Jesu.' The allusion to 1 Esdr. iii. 2 shows the coöperation of the two powers for the restoration of religion. Cf. L. Thomassin, Dissert. x. in Syn. Eph. i. § 14, p. 198, ed. Colon. 1784, seq.

[6] Cf. De Marca, de Conc. l. v. c. vi. Leo. M.—Ep. 93, ad Syn.; Ep. 89, ad Marc. (Jaffré, n. 253, 247) — preserved completely all the rights of his See.

[7] Mansi, xvi. 25 seq. 33 seq.; p. 316 seq.

[8] The force of the words of Celestine, Ep. 17 (Jaffré, n. 160), written to the legates appointed to Ephesus, is overlooked: 'Ad fratrem et coepiscopum nostrum Cyrillum consilium vestrum omne convertite, et quidquid in ejus videritis arbitrio, facietis. Et auctoritatem Sedis Apostolicae custodiri debere mandamus; ad discrepationem si fuerit ventum, vos de eorum sententiis judicare debetis non subire certamen.'

[9] Mansi, iv. 1119.

[10] Dionysius Exiguus reckons this number only; also Theodorus Lector (l. iv. p. 168, ed. Migne), Johan. Scholasticus, Eclogae Hist. by Cramer, Anecd. Paris, ii. p. 101, and elsewhere. Ballerini, in Diss. i.; Quesnell, a. 451, n. 14, p. 869. This is treated in detail in Photius, vol. i. pp. 76-89.

[11] The letter to Innocent XII. of Sept. 14, 1693, is given by Du Plessis, t. iii. Append. p. 5, strictly according to the Vatican Archives, Theiner, Hist. de Clément XIV. vol. i. pp. 332, 333.

§ 5.

The opinion that the Popes, with respect to the right of definition, were in no way superior to other bishops, has been long ago set aside by theologians, and in particular by the Gallicans.[1] The fourth Gallican article of the Declaration of 1682 gives to the Pope, in the decision of questions of faith, the 'principal share' (praecipuas partes). It has ever been acknowledged in the Church that a Council without the Pope cannot be a General Council. Whether the Pope defines with the 'approbation of the holy Council' (sacro approbante Concilio), as has been the case in all Councils in which the Pope was present in person, or whether the Council speaks in its own name, and the confirmation of the Pope is added,[2] is in essence the same; but Catholic theologians have ever recognised the participation or confirmation of the Pope to be essential to an Ecumenical Council.[3] This one historical fact is unassailable, and is enough to prove the Pope's right of definition: no Council, however numerous, has ever obtained universal recognition if rejected by the Roman See, and only those acknowledged by Rome have been acknowledged also by the whole Church.

[1] Thomassin, Dissert. xii. in Conc. Chalc. § 1 seq. p. 248 seq. The Sorbonne in 1605 condemned the sentence: 'Le Pape comme Pape n'a plus de puissance qu'un autre en ce qui est de la substance et des articles de la foi et qui n'est point déterminé, si ce n'est qu'il lui soit révélé par exprès' (Du Plessis, t. ii. P. i. p. 542). Febronius himself (De Statu Eccl.

c. vi. § 4, n. 3) says: 'Ei (Papae) competit jus relationis seu primae sententiae, ita ut ipsius sit referre ad Patres, quid de re censendum sit, et primam ferre sententiam, quae definitionis vim habet, si Patrum sententiis firmetur.'

[2] At Constance both forms were used; the first after the election of Martin V., the last before there was a 'Papa certus.' Augustinus Patricius, c. 1488, accurately states the distinction, Ordo celebrandi Generalis Concilii, c. ix. (Walter, Fontes, i. p. 126).

[3] Ballerini, not. in Leon. M. Ep. 114 (Migne, l. iv. pp. 1439-1441). Thomassin, Dissert. vi. in Syn. Occ. ii. pp. 134, 135. A. Duval, Tr. de Supr. Rom. Pont. Pot. p. vi. q. 6, p. 525 seq. ed. 1614.

§ 6.

It is also said that the order of business in the Council interfered with the freedom of the bishops. The opposition party allow that no settled order of business existed in the General Councils of the first century.[1] At Constance[2] the necessity of some such arrangement was recognised, but under the pressure of extraordinary circumstances the practice of former Councils was entirely set aside.[3] Likewise at Trent no restrictive order of proceeding was established; Massarelli's notes[4] contain only the order as actually observed there (modus observatus), and not any rule for such an order (modus praescriptus). The question put by Cardinal del Monte, during the discussion on a decree, whether the manner of proceeding gave satisfaction, cannot in truth be taken as proof that an agreement had been made with the bishops upon the whole order of business, as Döllinger desired. The Vatican order of business was in the main the same as that observed at Trent, often agreeing with it even word for word.[5] A full discussion by the Council of the order of business would not have been possible without great loss of time. The right of the Pope to settle this order by virtue of his presidential office was not disputed even by the episcopal memorial demanding alterations. The order of business was in the first place drawn up and published by the Pope,[6] then further developed according to the proposals of the majority of the Fathers, suggested by their experience,[7] and as a matter of fact accepted by all the bishops.

But in order more effectually to preserve freedom of vote to the Fathers, not only was the draft of the decrees submitted

whole and entire (integra integre) to their free discussion, so that in word and in writing they could express their opinion upon them,[8] but the privilege of making independent proposals was likewise granted them, naturally under certain conditions, some of which were intended to facilitate discussion.[9] A right of making proposals was fully conceded to the bishops, subject only to the control of the committee appointed for the purpose, precisely as was the case at Trent.[10] Thus the Pope granted to the bishops, in a limited degree, a share in the initiative power which was his, without indeed lowering himself to the position of a president subject to his parliament, which innovators would have had him do.

That the presiding cardinals should from time to time interrupt bishops, and call them to order, was formally and materially justified by the practice of all parliamentary assemblies, of the more ancient Councils,[11] and even of the Council of Basle,[12] and happened to bishops of the majority as well as to those of the minority.

It is said, that in the disputes respecting the Council the Pope most plainly sided with one party, encouraging and commending the infallibilists by word and in writing, and blaming their opponents. Should he, then, have been silent when men were beginning to cast doubts upon a truth of which he was convinced, were intimidating and holding up to scorn the most faithful defenders of the Holy See, were announcing as true theological doctrine propositions long ago censured and condemned, and going even so far as to call the doctrine of infallibility an heretical doctrine? Is it not the duty and the right of the Pope to protect the faith of the Roman Church from calumny, and to defend it at every point, to uphold the decrees and censures of his predecessors, to preserve the prerogatives of the Apostolic See, especially as the 'Curial system' had become the watchword of the opposition?

The Pope never sought to check the discussion of difficulties, but only to check accusations made in the heat of the conflict against the constitution of the Church, and rash censure of a doctrine ever held in high esteem by her, which

doctrine, though not yet defined, could never be pronounced indefinable. While, on the one hand, those bishops who considered it as unneeded and inopportune to proclaim the infallibility of the Pope's doctrinal decisions as a dogma were appealing to the fact that Catholics had never been so submissive to the Pope as at the present time, those men, on the other hand, who considered themselves as the representatives of German learning called in question in the most shameless way the obedience due to the Pope, and raised aloft the banner of open insurrection. Against this the Pope was forced to lift up his voice, in a manner not to be misunderstood. Neither physical force, nor threats, nor intimidation were employed; nor has a shadow of proof been brought forward of their existence.

The proposal for the definition of infallibility was not amongst those laid before the bishops by the Holy See: it was brought in by an overwhelming majority of the Fathers. Ought the Pope to have simply rejected this petition of the bishops? How would it then have been with the freedom of the Council? What do the oppositionists say on this point? If they say the Council would then have been free, they prove that they desired freedom for their own party only, and were willing to see tyranny exercised over the majority of the Fathers; if they are forced to concede that the Council would not in that case have been free, how can they, in the interests of freedom, complain of the actual conduct of the Holy Father?

[1] Döllinger, Declaration in the Allgemeine Zeitung, March 11, 1870.

[2] Mansi, xxvii. 657, 658.

[3] Mansi, l.c. 563.

[4] Friedrich, Doc. i. pp. 265-276. Cf. Fessler, Das Vaticanische Concil. Wien, 1871, p. 32.

[5] The passages given in Cecconi's History, i. Test. p. 172 seq., from the vote of von Hefele, then consultor at Rome, drawn up in 1869, prove moreover that many points of the order of business of Nov. 27, 1869, afterwards so bitterly attacked, corresponded closely with the proposals of this learned German, and in more than one respect put to shame the opponents of the Council.

[6] Const. *Multiplices inter*, 27 Nov. 1869.

[7] Decret. Legat. 20 Feb. 1870. Cf. Schreiben, Ueber das Vatican. Concil. § 2, pp. 7, 8.

[8] Const. 27 Nov. 1869, § 7.

[9] Ib. § 2. Cf. Fessler, l.c. p. 34.
[10] Raynald. a. 1563, n. 32, Lit. Leg. ad Ferdin. I. Imp.
[11] Pallavic. Hist. Conc. Trid. l. ix. c. i. n. 7.
[12] Mansi, Conc. xxix. 378.

§ 7.

An attempt prejudicial to the freedom of the Council was indeed made, but it did not proceed from the side of the Pope; far otherwise. The interference of secular diplomacy, by which in truth an attempt was made to exercise pressure on several bishops of the majority, and on the Pope himself, throughout the course of the Council, was called forth and extolled by that very opposition party which proclaimed the freedom of the Fathers injured by the Pope, and would fain have seen his legitimate influence lessened. In the newspapers of this party, since shown in its true heretical colours, there are not alone complaints as to the exclusion of laymen, and especially of the envoys of princes; but it is moreover said that the opposition party was supported by France, and by French influence in the States of the Church; that many bishops who were of this mind thought with painful longings of the Council of Trent, at which the envoys of monarchs supported the foreign bishops; that first France and then Austria and Prussia mingled drops of wormwood in the joyful cup of the homage of the majority. The two letters of Count Daru, and later his notes, were received, we are told, with exultation, and afterwards the memorials of other powers, until it was at length perceived that the Curia had succeeded in setting aside the attempted interference of governments, so that the combat, as was fitting, had to be fought out by the bishops themselves.

Without speaking of the distinguished ladies who 'had much to do' with the minority in the Council, the so-called 'matriarchs,' the warning given to not a few of the bishops on their road by the statesmen of various countries, and the influence exercised by accredited envoys in Rome, strengthened by menaces and intimidation from the home press, were all without doubt intended to act as pressure upon the bishops. Even before the opening of the Council attempts at dissuasion and intimidation

of all sorts were made.[1] The adherents of *Janus* were constantly recalling the circular concerning the Council, issued by the former Prime Minister of Bavaria, the Prince von Hohenlohe, dated April 9, 1869. The Pope was openly threatened with the abolition of the Concordats, the withdrawal of the French garrison, the prohibition of Peter's pence, with attacks on Church property, and with numerous apostasies, especially among the Orientals. Intrigues were prepared long beforehand among the Armenians in Constantinople, the results of which are now seen.

'This intimidation,' says a bishop, 'these menaces, supported by a press conducted in a manner corresponding, lasted for months; but some doubt being felt as to their effect, every means was at the same time employed to protract the labours of the Council, and so to lengthen its deliberations that the setting in of the hot season, or some other longed-for occurrence, might make the definition impossible, and render its postponement or that of the Council itself indispensable. And now persons, who must be well aware of the whole conspiracy against the freedom of the Council, bring the outrageous charge against the Pope, as though he had 'through moral pressure' so impeded the freedom of the Fathers of the Council, that they voted for doctrines which they did not acknowledge as true and handed down by tradition.'[2]

[1] Friedrich, p. 349, tells us that as early as the summer of 1869 the Prussian and Bavarian governments were desirous that the aged king of Saxony should represent them at the Council as their envoy, which, however, he declined to do.

[2] Ratisbon Pastoral, Oct. 28, 1870, § 15, p. 49.

§ 8.

Truly comic was the demand made by a portion of the German press, that the decision should rest with the bishops of the opposition, even though few in number, because they represented the largest dioceses, and the intelligent inhabitants of capitals and large towns, and because they themselves were the more learned men, while those who belonged to the majority were far behind them in intelligence and learning. This is indeed a new rule never thought of in early ages. Had the votes

of the bishops been weighed according to the 'intelligent inhabitants' of their cities, the head-quarters of luxury and unbelief, how would it then have fared with the Church? Had such a rule prevailed in the first eight centuries of the Church, the subject of so much praise, the heretical bishops of the ancient imperial city Constantinople, who were numerous, would have had the decision in their hands. Do bishops, then, come to a General Council merely as deputies of their people, as envoys from their dioceses? Or were the bishops of Nicea, for instance, in 325, estimated according to their learning? Was the decree of the Council ascribed rather to their knowledge, or to the Holy Ghost? Were not the Apostles 'unlearned men,' through whom God put to shame the wisdom of this world? And have not all heretics charged the bishops who condemned them with ignorance?[1] Here again the so-called 'old Catholics' show themselves the worthy followers of heretics who have gone before; they come forward as the sole 'defenders of learning;' but as is ever the case with falsehood, in so doing they involve themselves in fresh contradictions.

But have the majority of the Fathers been in truth convicted of ignorance of theology and weakness of intellect? If coarse abuse could be taken as proof, then indeed more than enough would have been given.[2] Happily, however, actual proof to the contrary exists. But how stands the case with the 'learned opposition bishops'? Alas, they lost their reputation at once when they submitted to the decrees of the Council. And even while they were as yet held in honour, a most unfavourable account of their learning was given us by one of the fanatical 'fallibilists,' who pretends to have observed them closely, and to have had considerable influence with them;[3] one prelate makes no use of theology, another no use of books. In general, on the side of the minority there are to be found 'no truly great and imposing characters.' The defenders of German learning were anxious to render even the bishops docile pupils and mere tools of their own; while they also felt themselves called upon to save the honour of governments.[4]

So far as the theological arguments of the opposition are

concerned, it is easy to show that they are of no great scientific value. The oppositionists even suffered themselves to be betrayed into declarations which would have met with severe censure, not merely from the 'Curial authorities,' but also from the ancient theological faculties, even from that of Paris; e.g. that the denial of our Lord by St. Peter was an apostasy from the Faith;[5] that all the Apostles, in an equal degree with St. Peter, were made foundation stones of the Church;[6] that the words in St. Luke xxii. 32 are to be confined to the person of St. Peter only during the time of Christ's Passion;[7] that the striking words of the Fathers on the privileges of St. Peter are to be taken as rhetorical exaggerations.[8] The arguments brought forward against the definition proved weak, and were by no means left unanswered, as has been maintained. The pamphlets were refuted in numberless replies, the speeches in powerful counter-speeches,[9] and the observations of individuals in the discussions of the dogmatic committee. But even if the fitting solution should not have been found for every doubt and every difficulty, is that any gain for our opponents? Did the ancient Church delay her definitions until learning had removed every difficulty from the path? Even now, after so much labour, do not scientific difficulties still exist on the canon of Scripture established by the Church, on the mysteries of the Trinity, the Incarnation, and the Eucharist?

[1] M. Canus, De Locis Theol. l. v. c. vi. seq. 176.

[2] Take, for example, the revolting manner in which the Bishop of Paderborn is reviled in the Journal before mentioned and elsewhere, and also the late Bishop of Würzburg, Dr. Von Stahl, well known for his thorough knowledge of theology.

[3] Friedrich, from whom also the other quotations.

[4] Interesting indeed is the statement in Friedrich's Journal, p. 283: 'Had not German learning [in the person of its representatives] saved the position [of the governments] and established an opposition in the Council, and kept it continually alive, even against the will of the governments!! [a noble confession!] and had not our Lord God placed folly and ignorance on the side of the majority and of the Curia, governments would have been brought to shame in the face of the whole world.' All parties in turn come in for a share in his compliments.

[5] M. A. de Dominis, l. i. c. vi. n. 35 seq., censured by the Faculty of Cologne, 1618, and by that of Paris, 1617 (Du Plessis, t. iii. P. ii. p. 197; t. ii. P. ii. p. 105, prop. 8).

[6] De Dominis, l.c. n. 45, 49, c. ix. n. 7. Censura Colon. l.c. pp. 197, 200, as prop. haeretica.

[7] De Dominis, l.c. c. ix. n. 8. Censura Colon. l.c. p. 200. Cf. Synops. Observ. n. 18, 22, 114, 134.

[8] De Dominis, l.c. n. 19 seq. Censura Colon. l.c. When E. Dupin (Nouvelle Biblioth. des Auteurs, t. i. pp. 8, 19; p. ii. p. 274) designated the expressions used by St. Augustine and Theodoret in praise of the greatness of the Roman Church as compliments, the Archbishop of Paris, François de Harley, considered the epithet offensive, and Dupin explained: 'Je n'ai point prétendu que ce fussent des complimens, qui ne soient pas fondés sur la vérité, reconnaissant que ces éloges sont très-véritables' (Du Plessis, t. iii. p. ii. p. 383).

[9] Vide Animadversiones in quatuor libellos, and elsewhere. Cf. Histor. Polit. Blätter, vol. lxvi. p. 500 seq.

§ 9.

The composition of the Council was another ground of complaint, inasmuch as the Vatican Council numbered amongst its members entitled to a vote many who were not bishops.[1] But there were, in fact, only 59 of these to be set against 608 consecrated bishops—that is, they formed not even a tenth part of the assembly;[2] they consisted only of special personages, to whom by reason of their position the right of taking part in a Council is granted by ecclesiastical law, as was laid down as early as the Council of Basle.[3] These are cardinals, who, as electors of the Pope and organs of the central government of the Church, hold a prominent position, and who had, moreover, the right of vote in the Councils of the Middle Ages.[4] Also generals of orders, most of whom have more priests under them than have many bishops; and abbots-general, who, since the Seventh General Council, have had power to confer minor orders on members of their order,[5] and have possessed quasi-episcopal rights.[6] No one felt any scruple when Paul III., in 1542, summoned to the Council of Trent the bishops, abbots, and others, 'to whom, by virtue of right or privilege, the power of taking part and voting in a General Council has been granted.'[7] Bishops lawfully consecrated, even though they possess no dioceses (bishops in partibus infidelium), belong by virtue of consecration to the episcopate.[8] 'Bishops without dioceses' (Maret and others), whom the opponents of the Council could num-

amongst themselves, were made welcome by them. Had they been able to claim the whole number, we may be sure no complaint would have been made of their lack of diocese.

[1] Kenrick, De Pontificia Infallibilitate, Neap. 1870, p. 35.

[2] Fessler, Das Vatican. Concil. p. 22.

[3] Thus, Augustin. Patric. Ordo Celebr. Conc. c. iii. (Walter, Fontes, p. 120). It is well known that Peter d'Ailly (Mansi, xxvii. 561) and Gerson (De Pot. Eccles. ii. 250) proposed a still further extension of the right of vote.

[4] Hefele, v. 984, seq. vi. p. 116.

[5] C. xiv. Hefele, iii. p. 447. Thomassin, de Vet. et Nova Discipl. p. i. l. iii. c. xvii. n. 3.

[6] The Abbot of St. Columban had even, according to Bede, several bishops under him.

[7] Const. Initio Con. Trid. ed. Richter, p. 6.

[8] R. M. Coppola, Sul Diritto suffragio de' Vescovi titolari e rinunziatarii nel Concilio Ecumenico, Napoli, 1868. Walter, Kirchenrechte, § 157, p. 294.

§ 10.

Louder still are the complaints against the 'principle of majority, which in matters of faith is absolutely inadmissible, but which was followed nevertheless.'[1] 'I ask,' writes Pallavicini, 'with whom rests the power of decision? with the majority, or with the minority? The practice of all councils, of all assemblies, and even common sense itself, give an answer to the question.' In every assembly in which important questions are decided all are settled by the majority, and no one has yet maintained that the decision should rest with the minority.[2] Had the Pope agreed with the minority in the Council, it is certain that the new Protestants would have praised him as much as they abuse him. Even the Gallicans considered a decision unassailable when sanctioned by the Pope and a majority of the bishops.[3] Moreover, Mgr. Maret, once so renowned amongst the oppositionists, even held the Pope to be bound to confirm the decision of the majority in the Council;[4] and it was only when it became plain that the majority of the Fathers was on the opposition side that support was sought in another quarter. How is the absolute inadmissibility of deciding by majority proved? By the theory, newly discovered, of moral

unanimity,[5] which however has no sure foundation, either juridical or historical.[6]

Even in the first six General Councils no such absolute unanimity was required. Neither was it insisted upon at Constance; still less at Basle or at Trent. Some amongst the bishops might be affected by heresy, as was the case at the First General Council of Nicea. According to this principle it would always be possible to such to put a stop to any definition. The idea of 'moral unanimity' is, moreover, uncertain and elastic in the extreme, and has never been defined with precision.[7]

Further, 'moral unanimity' did, as a fact, exist when the final and solemn votes were given, which, to the exclusion of all preparatory votes, are alone to be considered here. Two bishops only voted 'non placet,' and even these afterwards gave in to the decision of the Council. Those who withdrew beforehand renounced thereby their right of voting, and were no longer members of the Council. The votes passed July 13th were not decisive, and therefore many members of the Council were absent who were strongly in favour of the definition, and afterwards voted solemnly for it. Amongst the 62 who at that time voted 'yes' conditionally (placet juxta modum), the majority was composed precisely by those who, in opposition to Gallicanism, desired the words 'of himself, and not through the previous agreement of the Church,' to be added (ex sese, non autem ex consensu Ecclesiae). While all this proved the perfect freedom of the Fathers in giving their votes, it also showed the moral unanimity within the Council; and this was rendered more striking by the adhesion of many bishops who had been unable to appear in Rome, and who far out-numbered those who voluntarily absented themselves. But it has been said that in Rome the first 'no' weighs incomparably more than the later 'yes.' Why should this be? When, at the provisional voting of July 13th, certain bishops replied in the negative, they were opposing no decree of the Church; but when they afterwards voted 'yes,' they did so in the face of an unassailable decree. The Bishop of Ermland observes:[8] 'A deputy cannot disregard a law passed by the Chambers, and confirmed by the king, on the f

that he with the minority has ever expressed himself against it and dreaded its consequences. This rule, which applies to the government of a country, applies likewise to the laws of the Church, and bishops are bound to acknowledge and yield obedience to the canons lawfully passed by the highest ecclesiastical authority, even though they may previously have entertained opinions as to their opportuneness differing from the opinions of the majority; and even though from the excited and misguided state of public opinion they may have feared evil consequences from the passing of a decree in itself perfectly just.'

It is true that some fifty bishops did absent themselves from the fourth solemn assembly in the Vatican, July 18, 1870, and in a declaration dated July 17, 1870—before the definition therefore—upheld and renewed their former negative votes;[9] but still they could neither turn the Council into a 'rump Council,' nor call in question the authority of the decree of 533 bishops, sanctioned by the Pope, as indeed the greater number of the absent bishops have themselves explicitly acknowledged.[10] A document such as this, external to the Council, and proceeding from a fluctuating minority of between a ninth and a tenth part of the Fathers, could have as little weight against the Council as the protest of the 43 bishops assembled under John of Antioch at Ephesus in 431 against the true Council led by St. Cyril;[11] it did not even carry the weight of an engagement on the part of those who signed it not to submit to the authoritative decision, and it was, moreover, retracted by the submission which followed.

[1] Berchtold, Döllinger, &c.

[2] Cf. c. i. De his quae fiunt a maj. parte, cap. iii. 21. Innoc. III. l. ix. Ep. 125 (Migne, ccxv. 945). Turrecrem. de Eccl. l. iii. c. lxv. Jacobat. de Concil. l. vi. a. 3, n. 1, 2, 57.

[3] Natal. Alex. H. E. saec. vii. diss. ii. prop. 2. Regnier de Eccl. Christi, p. i. sect. i. c. iii. Tournely, de Ecclesia, q. 4, a. 4, 5.

[4] Maret, Du Concile et de la Paix Religieuse, i. p. 424.

[5] Döllinger, Allgemeine Zeitung. De l'Unanimité morale nécessaire dans les Conciles pour les Definitions dogmatiques, Naples, 1870. L'Unanimité dans les Conciles écuméniques, Paris, Dentu, 1870.

[6] Steccanella, Adversus novam Doctrinam de necessitate Episcop. Consensus, Romae, 1870. Schneemann, in den Laacher Stimmen über das ökum. Concil. ii. 3, pp. 52-70. M. Schrift, Ueber das Vatican. Concil. iii. pp. 13-16.

[7] Fessler, l.c. p. 107.

[8] Letter to the Minister v. Mühler, Dec. 20, 1871: Germania, Jan. 24, 1872.

[9] The Archbishop of Cologne and the Bishop of Mainz did not sign the declaration.

[10] Cf. Fehr. v. Ketteler, Die Minorität auf dem Concil. p. 11. Cologne Pastoral, Sept. 12, 1870, p. 10 seq. Trêves Pastoral, Sept. 14, 1870.

[11] Conc. Ephes. Hard. iii. 750.

§ 11.

Here again is another point of resemblance between this and former heresies. The theory that in a Council the majority cannot pass a decision, that bishops are merely the deputies of their Churches, and that their resolutions must first be agreed to by these Churches, was promulgated for the first time in Germany by the Protestant Samuel Pufendorf.[1] E. Richer[2] and his adherents in France, amongst whom above all are numbered the Jansenists, gave expression to precisely the same theory. In the foregoing century, its boldest defender, with the exception of Febronius,[3] was Petrus Tamburini of Pavia, according to whom in the last resort the faithful are entitled to decide whether a Council has in truth represented the Universal Church.[4] Precisely similar is the doctrine of the apostate M. A. de Dominis, which, in so far as it insisted on the assent of laymen as necessary to the definition of an article of faith,[5] was declared by the Sorbonne, 1617, to be heretical, and destructive of the stability of the Church.[6] Even amongst the Calvinists, in the years 1565, 1582, 1598, the opinion that the government of the Church, and in particular the definition of doctrine, belongs to the people, was condemned,[7] and appeal to the civil magistrate was forbidden.[8]

Moreover, Fénélon did not, as has been maintained,[9] consider bishops as legates and deputies of their dioceses, that is, of parts of the Church, but as deputies of the Church Universal.[10] The assembly of the French clergy (1715) declared schismatical and heretical the opinion that bishops are to be looked upon as only delegates and interpreters of the assembly of the faithful and only commissioned to declare the views of the Churches

which they preside.[11] The theological Faculty of Cologne also declared, January 11, 1715, that assent or acceptance on the part of the faithful could impart no power or additional efficacy to the definition of the Pope.[12] Neither can the decrees or judgments of a General Council be subject to the examination and approbation of individual diocesan synods, nor can their power of binding depend upon their acceptance by such synods, a proposition condemned by Pius VI. (1794) on occasion of the pseudo-Council of Pistoja.[13]

[1] Pufendorf, de Habitu Religionis Christ. ad Vitam Civilem, § 38, p. 126, ed. Brem. 1687, teaches that the members of a Council are not to be considered as members of a senate or college: 'Quorum major pars suffragiis suis propositum negotium decidere queat, sic ut ista decisione quisque Christianorum stare utique teneatur, praesertim cum in universum veritas non semper a majori suffragiorum numero dependeat,' but are not to be looked upon otherwise than as 'deputati ecclesiarum.' 'Ad quam decisionem amplectendam Ecclesiae non tenentur, nisi quatenus cum divinis literis congruam deprehenderint. . . . . Quodsi autem a Conciliis aliquid super moribus decretum fuit, id non aliter vim obligandi habere intelligitur, quam ex antegresso mandato aut subsequente approbatione ecclesiarum, sic ut Concilia nullum in Ecclesiam imperium obtineant.'

[2] Richer, de Eccles. et Politica Potestate, 1611. Cf. also Du Plessis, t. ii. P. ii. p. 308.

[3] Febron. de Statu Eccl. t. i. c. vi. § 8, n. 12, p. 436 seq.

[4] Tamburini, Vera Idea della Santa Sede, p. 204. Analisi delle Prescrizioni di Tertulliano, § 47, 65. Bolgeni, l'Episcopato, vol. ii. c. ii. a. 1, p. 93 seq., n. 412 seq.; and Risposta all' Appellante, Macerata, 1787, p. 431 seq. Döllinger, A. Z. March 11, 1870, wrote in precisely the same sense, and, as the Civiltà Cattolica remarked, he wished to bring an Italian's Jansenistical wares into esteem in learned Germany.

[5] M. A. de Dominis, de Rep. Christ. l. i. c. xii. n. 42.

[6] Du Plessis, t. ii. P. ii. p. 106, n. 13. In like manner the Faculty of Cologne, 1618, ibid. t. iii. P. ii. pp. 203, 204. To the earlier sentence (l.c.), n. 9, of the same De Dominis—'Totam Ecclesiam esse columnam et hanc Ecclesiam totam non esse in solis episcopis et presbyteris, neque Spiritum illum, quem Christus sui vicarium relinquebat, in terris alligatum esse soli ordini presbyterorum aut episcoporum'—the Faculty of Cologne remarked (p. 202): 'Propositio partim haeretica, partim fraudulenta; indicat enim in definitionibus Conciliorum plebem habere votum decisivum et apostolum eodem detorquet.'

[7] The Synod of Paris, 1565, condemned the writings of Jean de Moreli: 'Car en attribuant le gouvernement de l'Eglise au peuple, il veut introduire une nouvelle conduite tumultueuse et pleine de confusion populaire;' and the Synod of Montpellier, 1598, says: 'Le jugement et les décisions, qui concernent la doctrine, n'appartiennent qu'aux ministres et aux pasteurs'

(Actes Ecclés. et Civ. de tous les Synodes Nation. de l'Eglise Réformée de France, t. i. pp. 58, 221).

[8] Synod of Vitré, 1582; Assembly of Montauban, l.c. pp. 160, 176. Franc. Turrettini, Instit. Theol. p. iii. q. 22, de Vocat. Pastor. § 18. Cf. Bianchi, t. i. l. iii. § 1, n. 6, pp. 442, 443.

[9] Döllinger, A. Z. l.c.

[10] Fénélon, de Summi Pontif. Auctorit. c. xxxiv. t. ii. p. 861, ed. Vers.

[11] Congr. Cleri Gall. Collect. des Procès-verbaux, t. vi. Pièces Justificatives, pp. 505, 506.

[12] Roscovány, Rom. Pontif. ii. p. 62 seq.

[13] Const. Auctorem Fidei, n. 11. Denzinger, Enchir. p. 391, n. 1374.

§ 12.

'It rests finally with us theologians,' says Friedrich,[1] 'to decide whether the Council be ecumenical or no. I answer for it that as an Ecumenical Council it will be disowned.' Naturally enough the Vatican Council did not submit to the guidance of such theologians as these.

But what sort of theologians are they? They are theologians who have all but copied the book of the apostate Archbishop de Dominis, which was an object of indignation and disgust to all Catholics in his day, and even to Gallicans. The independent 'German theologians' are come to this, that they bring forward heretical wares as being 'genuinely Catholic.' They are liberal theologians, who are entirely under the dominion of so-called 'public opinion,'[2] who bow before the reigning spirit of the world, who desire to strip the Church of her divine character,[3] and who, in the place of her supernatural certainty, desire a purely natural moral certainty springing from universal testimony. To obtain this no supernatural aid of the Holy Ghost is needful;[4] but woe to the Church, the Bride of Christ, if ever-changing 'public opinion' were able to triumph over her! The description given by Tournely (1729)[5] holds good of these liberal theologians: 'The authority of the Church dispersed throughout the world (Ecclesia dispersa) is disowned, and to a General Council alone—which is itself made subject to the judgment of individuals, and is not in truth acknowledged—is appeal made as the highest judge in cases of dispute. The sacred dignity of Pope and bishop is violated; simple priests are placed almost on a level with bishops; the right of private judgment in matters

of faith is claimed and usurped, not merely by simple priests, but even in the most insolent manner by laymen; the Church is represented as so completely shrouded in darkness, that scarcely a faint spark of light seems to be left within her.'[6]

[1] Journal, p. 203; also p. 345: he wrote, that in fact the Council could no longer be spoken of as ecumenical, although, alas, the bishops could not be quite clear on the subject.

[2] Gioberti (La Riforma Politica, Torino, 1856, p. 54): 'La dittatura dell' *opinione*, e quindi dell' ingegno ha luogo nella Chiesa come nello stato. In virtù dell' opinione i fedeli hanno un potere sulla gerarchia. Dall' opinione dipende la signoria estragerarchica dell' ingegno nella società cristiana; ma non è mai antigerarchica. In ogni società *oltre i poteri ordinarii* è necessario un potere *straordinario*. Questo è creato dall' *opinione* e fondato su di essa. L' *ite docete* è detto anchi ai laici. Il laicato lo esercita ora col commercio, ora colle conquiste.' Dr. Döllinger expressed much the same idea in his speech, Sept. 28, 1863 (Verhandlungen der Kath. Gelehrtenversammlung in München, p. 47), when he pointed out public opinion as the extraordinary power existing in the Church side by side with the ordinary power, and which he likened to the race of prophets amongst the Hebrews.

[3] 'Humanum conari Ecclesiam facere;' Cypr. Ep. 52, ad Antonian.

[4] Cf. Historisch-polit. Blätter, vol. lxvi. p. 508.

[5] Du Plessis, D'Argentré Collect. Judic. t. iii. P. i. pp. 179, 180. Tournely, ibid. p. 183: 'Hoc statuimus et contendimus, ... legem publica et legitima auctoritate latam firmam *ex sese* et inconcussam esse debere, nec privato cuicunque, ut eam infirmet, fas esse inquirere in examen modum et motivum, quo lata est (Can. de loc. v. 5, quoted). .... Quodcunque supponatur legis motivum, fieri numquam posse, vi promissionum Christi, ut Ecclesia erroneam acceptet et approbet sententiam. Ergo legis literae, quae sola subsistit et vim habet, standum est ac supponendum, ne ulla deesset ex requisitis conditio ad firmam, certam et inconcussam definitionem.'

Part III. The Hopes of our Opponents.

§ 1. A new and 'freer' Council. § 2. Döllinger's proposal. § 3. Pretended warfare of the Church against the State. § 4. Excommunication. § 5. The Council a test of States. § 6. The heathen State and State omnipotence.

§ 1.

Throughout the opposition literature the hope was expressed of a 'new Ecumenical Council,' really free in discussion, which should do away with the Vatican Council of 1870.[1] Yet this hope was over and over again checked by the harmony of the assembled bishops, ever plainly expressed, and it must have been

acknowledged from the beginning to be a delusion by all who understood the subject. 'Never,' wrote Bossuet on a certain occasion to Leibnitz, 'will an example be found of a definition once made being deprived of its power by posterity.'

Our opponents say that a new *free* Council should be assembled; the governments of States should *compel* the Pope to do this for the avowed purpose of 'revoking the new dogma, and declaring the Vatican Council of no account.' This, then, would be a *really free* Council! And it should be held in Germany, whither the bishops of the Latin race would either come in small numbers, or not at all. That would indeed be a *universal* Council! And, moreover, appeal is made in the case of Bavaria to the Religionsedikt, § 56, by which the ruler has the right, if divisions arise in any religious denomination, of causing an ecclesiastical assembly to be held, but the concluding sentence is ignored, 'without mixing himself up in matters of religious doctrine.'

Some have cherished the hope that the successor of the present Pope might set aside 'the offensive portions of the decrees of Pius IX.,' and the recognition of the Prussian monarchy, refused by Clement XII., but granted by Benedict XIV., has been brought forward as a precedent; but this shows as little conception of the dogmas and essence of the Catholic religion as the notion that the same end might be obtained by imposing certain conditions on the newly elected Pope. Reasonable, from a human point of view, was the hope of the Revolution that the Papacy was buried with Pius VI., and the expectation that the power and cunning of men would put a stop to any future Papal election, or at least render it doubtful or invalid;[2] but, seen by the light of the Catholic faith, this hope is idle. Catholics rely on the promises of our Lord, who will not withdraw His aid from His Bride, nor suffer the rock of Peter to fall to ruins. But the less they mix themselves up in the concerns of other religions, the more annoying to them is the way in which men who have not the slightest call to interfere, and who would never dream of obeying the Pope, still insist upon considering the future Papal election as their own affair.

[1] Berchtold, p. 10; Friedrich, Journal, p. 343; and others.

[2] The following appeared in the Allgemeine Zeitung, June 5, 1872: 'We have hitherto spoken only of the possible influence of the European powers on the next Papal election, and of the conditional acknowledgment of the new Pope by the German empire. But what if it should come to pass that there is no valid election? Would not the thousand years old, the "wonderful" organisation of the Roman Catholic hierarchy fall completely all to pieces, so that side by side with the Gallican Church we should necessarily see national Churches in Italy, Spain, and Germany professing the Catholic faith, but existing independently and without any compulsory legislation?'

§ 2.

When the declaration of Fulda, published by the majority of the German bishops, became known, the design of holding a Council on this side the Alps was felt to be impossible. Therefore Dr. Döllinger, in his declaration, appealed from the bishops ill educated to the bishops better educated, or in reality to public opinion, since he demanded that a conference should be held before the assembled bishops, or before a committee of the cathedral chapter of Munich, at which a government official should be present as a witness; or he promised to submit to the judgment of the most distinguished of German historical critics.

But it is precisely from history that we learn how fruitless such disputations and conferences have ever been. Huss and Luther also professed themselves ready to retract, if only they were met with clear and convincing arguments. Take as an example the disputation at Leipzig, where each party claimed the victory. This shows us that although the evidence before us is (objectively) convincing, we may, if we choose, refuse to be (subjectively) convinced. Again, is a conference or a disputation to be of greater weight than a definition of faith pronounced by a General Council? or is it to overthrow an Ecumenical Council? In the Protestant movement of 1517, the Humanists were dragged into the fray; and now, in the new Protestant movement of 1871, the historians are dragged in, and are made to decide in a matter of faith; for with such are we dealing, and not simply with an historical question, as Döllinger with the Protestant Hase supposes.

§ 3.

'What, then, is the contest which must now be fought out?' asked the Counsellor of the Court of Appeal, Von Enhuber, at Munich, September 23, 1871; and he forthwith received the answer: 'It is no other than a contest of the Church against the State.'[1] But were not these the words of the Jansenists and other sects, who gave out that their desire was to defend the State against the Church? How has the Church too much power, especially when her Head is oppressed as he is now? Who can point to a single act of aggression on the part of the Church? Is it possible to consider as such the dogma of Infallibility, which has to do purely with matters of faith? and does not the mere attempt to prove it such involve gross misrepresentation of the dogma? When the peace between Church and State is troubled, the disturbance is not begun by the Church. Can it be said that the Pope did so, when he declined diplomatic interference in questions of dogma? or the Council, when with an immense majority it pronounced a purely ecclesiastical decree? or Catholics, who, in obedience to their ancient faith, submitted to the highest authority in the Church, and made themselves answerable for her just rights, which were threatened by open foes, and by others secret, but soon to be unmasked? or the priests, who have defended the freedom of religious profession, and the rights of their Church, for the most part at the cost of great sacrifice, while those amongst their brethren who were untrue to the Church, and therefore excluded from her, were taken under the protection of the State, and sometimes loaded with honours besides? And are Catholics alone to hold their peace in the face of intrigues against Pius IX. and against the future Papal election, though their aim be nothing less than endangering to the utmost the freedom of conscience of many millions of Catholics, for the sake of a small number of apostates? are they to hold their peace when all that is sacred is dragged in the dust, when absurd caricatures are hailed with delight, when the police are called in on all occa-

sions, and encouragement is given to ecclesiastical rebellion and anarchy in the Church?

[1] Report, Berlin, p. 97.

§ 4.

Again, is the administration of the laws of the Church an attack on the State? or the excommunication, which, according to primitive right, founded upon Holy Scripture, and existing even amongst Protestants and Freemasons, is pronounced by bishops against apostate and heretical priests? which sentence, far from injuring the civil rights of those concerned, has, on the contrary, been the means of making many persons famous who would not otherwise have been so. When the priest Thomas Braun was excommunicated for denying the dogma of the Immaculate Conception,[1] the highest court of justice in Bavaria, on his bringing an action, declared, May 3, 1860: 'The Catholic priest loses his claim on the Catholic Church for the support due to his position on quitting that Church, equally whether he leaves her willingly, or whether, having been ordained, he is cut off from her in punishment by the existing ecclesiastical authorities. For the penalty of complete exclusion from the Church, so long as it lasts, entails the loss of all rights springing from union with her, precisely as though the person in question left her of his own free will.[2] Moreover, the Catholic Church, by the well-known principles of her constitution, is entitled to demand from her subjects the acceptance on faith of *all* her decrees dogmatically pronounced, and to punish every positive and continuous denial, even though it be directed against *one* dogma *only*, with the greater excommunication,[3] provided the punishment, in the case in question, be inflicted by the proper ecclesiastical courts. There can be no doubt, according to the Verf.-Urk. Supplement ii. § 38*h* and 40, that in this case the episcopal court of Passau was acting within the limits of its power. But the civil court is not competent to decide whether the excommunication has been justly pronounced against the plaintiff.'

The case of the excommunicated priest Thomas Braun has

exactly repeated itself; whether the dogma in question be that of Papal Infallibility or of the Immaculate Conception, the case is the same from the standpoint of the civil authorities; both dogmas were published in the same manner, and one is as binding upon Catholics as the other; the excommunication was in each case pronounced by the proper authority. Whether the Government of the country does or does not itself accept the dogma in no way affects the matter; the Government must in any event regard it as rightfully existing within the domain of the Church; and within this domain, according to Catholic principles, the ecclesiastical authority alone has power to decide.

Since in matters touching the Catholic Church the State courts are by no means competent to act, neither most surely are their administrative magistrates, especially in deciding whether an excommunication has or has not been rightfully pronounced. The jurisdiction of the Church authorities is acknowledged by the constitution; interference in favour of persons cut off from the Church, for the protection of rights which belong to them only as members of the Church, can in no way be justified, especially as by this means the jurisdiction of the ecclesiastical authorities is nullified, and complete Cæsarism ensues.

[1] It is by no means true, as was maintained at Munich in 1871 (Report, p. 98): 'That the bishops, when the dogma of the Im. Conception was denied, forbore to disturb the peace of the country,' while in the case of the new dogma they 'at once raised a storm, in order apparently to get the sceptre of the State itself into their own hand.'

[2] On this point was quoted Permaneder, Handbuch des Kath. Kirchenrechte, vol. ii. § 557, n. 2; Kreitmahr, Anmerk. vol. v. c. xix. § 41, n. 3.

[3] Reference was here made to Annotat. ad Cod. Civ. v. c. xx. § 4, V.-U. Sup. ii. § 41, coll. § 38*a*.

§ 5.

The Vatican Council, together with its first great object of defending the Catholic Faith, and keeping it pure from the corrupting influences of rationalism and subjectivism, serves also as a test of States, as to whether and in what degree they still preserve the Christian character.

A State which is still Christian cannot repudiate its duty towards a recognised religion endowed with constitutional r

in favour of a sect clearly recognisable as such, and declared to be a sect by the competent Church authorities, and which, whether it will or no, proves itself by its own conduct to be such. It is true that a pretence is made of exceeding difficulty in deciding where the real Catholics are to be found, whether amongst the adherents of the Vatican Council, or its opponents. But nothing is easier or more simple. The Catholic Church is there where are the Pope and the Bishops; where exists communion with and obedience to the See of Rome; she is the Roman Catholic Church alone.[1] Even the heathen emperor Aurelian knew well how to distinguish true Catholics from the followers of Paul of Samosata, when he promised the Church buildings, about which a dispute had arisen, to those in communion with the Italian bishops, and especially with Rome.[2] Have not the followers of Döllinger already proved themselves a sect, and openly declared themselves Jansenists, by bringing from Utrecht (where a Roman Catholic bishop was in residence) Archbishop Loos, who was cut off from communion with the Church as a Jansenist, and was not recognised by a single Catholic bishop?

Plain rights cannot be set aside by an appeal to the 'irrefutable German science,' and to learned men who, besides an unparalleled changeableness of opinion, are answerable for the grossest errors, from which no one yet has succeeded in vindicating them; the faithful turn their backs upon them as false prophets, while the enemies of Christianity lend them the most open assistance; and those men who have long ago banished 'the whole apparatus of the history of revelation to the cabinet of old curiosities' are the loudest in their protestations against 'the good pleasure of an old man or his advisers being the highest law for the actions and inquiries of the human mind.'[3] Where nothing exists beyond pure negation the Catholic is never to be found; the 'reformers' of to-day have nothing positive about them, nothing but destruction and anarchy. If the 'Christian State' of these latter days does not perceive this, if it still thinks to find support in these reformers, then all Christian consciousness is completely lost to it.

[1] This is the Church spoken of by the Prussian Verfassungs-Urkunde, 1850, art. 15, and the Bavarian Concordat, art. 1.

[2] Eus. H. E. l. vii. c. xxx. The Theological Faculty of Paris, 1611, in its censure of a book having great affinity with Janus, entitled Le Mystère d'Iniquité, c'est à dire, l'Histoire de la Papauté, by Philippe Mornais Du Plessis, pronounced: 'Merito omnes Catholici exsecrari illos debent, qui S.R.E. primatum atque unicam Petri Cathedram scriptis suis evertere moliuntur, cum certissimum sit, *Ecclesiam*, quae est mysticum corpus visibile Christi, *nulla re vel nota accuratius dignosci*, aut a factiosis Satanae conventiculis *quam uno visibile capite* secerni *posse*' (Du Plessis, t. ii. P. ii. p. 49).

[3] Allgemeine Zeitung, Jan. 7, 1870.

§ 6.

But to go still further; the question of the day is, whether the ancient heathen State is to be revived in its most brutal development. Against the infallibility of the Church in her office as teacher is opposed in truth the omnipotence of the State in every sphere of life.

The heathen State, as Döllinger once wrote,[1] was founded on the principle of utility, of interest, and of brute force; it sought to penetrate all spheres of life, and as an ever-working, ever-grinding machine, to bow down the nations beneath its yoke. It believed, as up to the very latest times the Government of Japan also believed, that the doctrines of Christianity would undermine its very existence; worship of the fatherland was to it the soul of religion. Freedom of conscience was unknown to it,[2] and it saw in the Christian Church merely an unlawful society (collegium illicitum).

There are in the present day many who desire to replace the power of the State upon its old ground; they would absolutely root out from the Word of God the passage (Acts iv. 19; v. 29), 'God must be obeyed rather than man.' They would enforce the observance of all State laws already passed or to be passed in future (according to the good pleasure of the lawgiver of the day), as binding unconditionally and inviolably, without regard to the laws of God and of the Church. The bishops, it is said, much as in Russia,[3] are to submit without condition to all existing laws, and to those which by a continual increase

government interference are yet to be passed by an insatiable majority in the Chambers. They are said never to be at liberty to consider a human law as non-binding, which declaration neither bishop nor simple layman could ever make without gravely sinning against the first principles of Christianity.[4] This means no longer to render to Cæsar the things that are Cæsar's, but to deliver up to him also the things that are God's; obedience is to be withdrawn from God, and to be slavishly given to men, who are no longer His representatives, and who are overstepping the authority which in justice belongs to them.

The authority of the Church is no longer to be acknowledged, but in every sphere State omnipotence alone; and while it is impossible to point out one single case in which the rights of the State have been violated in consequence of the new dogma, the ancient rights of the Church, on the contrary, have been already grievously violated and set at naught. Civil governments will be driven so far as no longer to acknowledge any law not springing from themselves; the State will be made into a god, and divine honours will be claimed for it so long as unbelievers guide the helm.

This is the meaning of the fight for life or death with the Catholic Church, which is set down to her political pretensions. A man who has himself merely political aims, and has no conception of religious belief, supposes that the same is the case with others also; and when he meets with firm convictions founded on faith, he presumes some criminal intention, and calls physical force to his aid. Thus true Catholics are suspected by the mighty of the earth as dangerous to the State; whoever stands up for their doctrines is 'no friend of Cæsar;' the warfare is carried on against them, not merely by a restless and uneasy press, by the intellectual pride of the puffed-up wise ones of this world, and the childish darkness of men of superficial knowledge; but the police and the magistrate as instruments of despotism are also brought forward against them, they are threatened in their possessions, and if possible are deprived of all rights. Almost every form of unbelief or of superstition is tolerated, every sect, every party; from Catholics alone are all

rights to be withdrawn; their steadfastness is fanaticism, their sacrifices and assemblies are conspiracy.

Thus the endeavour of their enemies is to reduce all true Catholics to the position of the Christians of the first three centuries. But however grave the times may be, however fierce the battle raging against the Church, Catholics rely not on man, nor on any earthly power, but on the promise of God, which shall never be overcome, and the future will prove that once again, on July 18, 1870, the Church spoke 'to the honour of God our Saviour, to the exaltation of the Catholic religion, and to the welfare of all Christian nations.

[1] Döllinger, Heidenthum und Judenthum, p. 697.

[2] Döllinger, l.c. p. 667. Neander, Kirchengeschichte, i. pp. 47, 48, iii. a.

[3] In Russia every Greek schismatic bishop has to swear at his consecration that he will duly and conscientiously hold the office confided to him, both according to the general and personal instructions, regulations, and orders given, and to be in future from time to time given, in the name of his imperial Majesty by the officers appointed by him; and further, that he will maintain inviolable all things 'prescribed by the regulations of the most holy directing Synod for the whole of Russia, and by the Synodal documents, and likewise all that *in the future* may be unanimously ordered and laid down as law by the same most holy Synod, with the permission of his imperial Majesty' (M. Rajewsky, Euchologion der Orthodox-Katholischen Kirche, Wien, 1861, ii. pp. 94, 97).

[4] This is well pointed out, and a reference is made to Art. 16 of the Augsburg Confession and the Reformers, by a Protestant writer in the Germania, June 2, 1872.

ESSAY IV.

THE POPE AND THE BISHOPS.

No assertions have been so frequently repeated as these: that by the Vatican Constitution of the Church the position of the bishops has been changed; that the episcopate has become an unsubstantial shadow, and that bishops are now no longer bishops, but Papal deputies or plenipotentiaries, and merely instruments of the Pope, who has been invested with the universal episcopate.

These are the charges brought by the opponents: 1. That the Vatican Council has converted the bishops into mere plenipotentiaries of the Pope. 2. That it derives episcopal authority from the Pope, and not from God. 3. That it invests the Pope alone with the almost boundless power of the Church. Let us take these propositions separately.

PART I. THE BISHOPS HAVE NOT BECOME MERELY VICARS OF THE POPE.

§ 1. The power of the Pope the supreme but not the only power. § 2. Doctrine of theologians upon the ordinary and immediate power of the Pope. § 3. The power of the Pope does not annul the ordinary power of the bishops. § 4. The bishops as successors of the Apostles.

§ 1.

According to the doctrine of the Church, the power of the Popes is a *full* power, as it is called by the Council of Florence,[1] because there is no power in the Church in which the Head of the Church does not partake.[2] It is a *supreme* power, as the Council of Trent[3] calls it, because in the Church there is none more exalted, because all others depend upon it, itself independent of all.[4] It is an *ordinary* power, as it is called by the

Fourth Council of the Lateran,[5] because the Pope, by the rights appertaining to him as head of the bishops, can perform ecclesiastical acts in any diocese. As the bishop can, for example, according to his ordinary right, baptise where the parish priest either from carelessness or from some hinderance has not baptised, so the Pope can supplement the remissness of a bishop.[6] The power of the Pope is an *immediate* power, because it springs not from the Church, not from the bishops nor Councils, but from Christ Himself, and also because it can be directly exercised upon the faithful and their pastors.[7] It does not abolish the direct power of the bishops, but supplements and compensates it when interference is desirable for the good of the Church.[8] The power of the Holy See is an *episcopal* power, because its rights even over bishops are those of a bishop, and because the Pope is the bishop of bishops, the father of the fathers, the pastor of pastors.[9]

But as St. Bernard,[10] and with him all theologians,[11] teach, this supreme Papal power is not the only power to be found in the Church. The Pope has no power to abolish the episcopate;[12] he cannot outstep the limits of Christ's appointment, and all the earlier definitions of the Church are binding upon him. The Vatican Council plainly declares that the supreme authority of the Holy See is not opposed to the authority of the bishops; bishops have by the Holy Spirit been constituted successors of the Apostles, and endowed with ordinary and immediate powers.[13]

[1] Potestas plena. Decr. Union. Denzinger, l.c. n. 589, p. 201.

[2] Aichner, Compend. Jur. Eccles. Brix. 1862, § 24, p. 66, note 3. Petr. Ballerini, Vindiciae Auctorit. Pontif. c. iii. n. 10, p. 172, ed. Monast.

[3] Potestas suprema seu summa. Trid. Sess. xiv.

[4] Aichner, l.c. Ballerini, l.c. n. 1, p. 165 seq.: 'Suprema illa est quae supra omnes Ecclesiae potestates ita eminet, ut nulli istarum subjiciatur.' With Pius VI. (Respons. super Nuntiaturis Apost. c. viii.) the Fathers of the Provincial Synod of Aix, 1850, tit. ii. c. vii., describe it as 'suprema, plena numerisque omnibus absoluta,' and call it 'veri nominis jurisdictio, cui populi populorumque pastores subjacent, adeo ut in jure ecclesiastico summus Pontifex *nihil non possit, ubi id exposcit necessitas aut justa Ecclesiae utilitas.*'

[5] Potestas ordinaria. Later. iv. 1215, c. iii. s. c. xxiii. de Privil. v. [22]

(Rom. Eccl.): 'Disponente Domino super omnes alios *ordinariae* potestatis obtinet principatum.'

[6] Ballerini, l.c. n. 7, pp. 170, 171.

[7] Potestas immediata. Ballerini, de Potest. Eccles. Summor. Pontificum, c. i. § 1 et 2, pp. 9-11. Gerson ap. Thomassin, P. i. l. i. c. vi. n. 14. Also the Conc. Provinc. Burdigalense, 1850, tit. 4, c. i. of the Pope: 'That he is summus pastor, qui per universum orbem solus dioeceses instituit vel dividit iisque praeficit episcopos et jurisdictione immediata ubique pollet' (Freppel, de Primatu Rom. Pontif. Taurini, 1870, p. 14).

[8] Gerson, de Potest. Eccles. ii. p. 256: 'Plenitudo potestatis non potest esse de lege ordinaria nisi in unico summo Pontifice formaliter et subjective. Alioquin ecclesiasticum regimen non esset monarchicum et habere posset multiplex caput ex aequo, quod aperte est haereticum. Nec tamen plenitudo potestatis papalis sic intelligenda est immediate super omnes Christianos, quod *pro libito* posset immediate jurisdictionem in omnes per se vel per alios extraordinarios exercere; sic enim praejudicaret Ordinariis, qui jus habent immediatius, imo immediatissimum super plebes eis commissas actus hierarchicos exercendi. Extenditur igitur plenitudo potestatis papalis super omnes inferiores solum dum subest necessitas ex defectu Ordinariorum inferiorum vel dum apparet evidens utilitas Ecclesiae, quemadmodum dici potest de episcopis respectu plebanorum seu propriorum sacerdotum, quorum possunt supplere defectus.' Cf. Decret. l. i. tit. 10, de Supplend. Neglig. Praelat. Calixtus III. wrote to the Emperor Frederick (Aen. Sylv. Ep. 385): 'Non est, cur aliquis operam nostram criminari possit, tamquam latius evagemur quam nobis liceat aut tamquam in alienam messem falcem mittere videamur, cum non hujus aut illius provinciae sed *universi orbis praesulatum* in apostolicae sedis specula consecuti simus. Quae quum ita sint scimus tamen, *eos, qui vocati sunt in partem sollicitudinis*, non esse turbandos suamque cuique jurisdictionem, *nisi forsitan abutantur*, servandam esse non ignoramus.'

[9] Potestas episcopalis. Theod. Stud. l. i. Ep. 34. Bernard. de Consid. l. ii c. viii. n. 15. Cf. Thomassin, P. i. l. i. c. xi. n. 3. Coustant. Praef. in Epist. Rom. Pont. p. xi. n. 15.

[10] Bern. de Consid. l. iii. c. iv. n. 17.

[11] Ballerini, l.c. p. 171, n. 9. Neubauer, in Theol. Wirceb. t. vii. Tr. de Leg. c. iii. a. 5, n. 106, p. 140.

[12] Gerson, de Statib. Eccles. Consid. 4: 'Status episcopalis non ita subest statui papali, quod illum Papa possit annullare, sicut nec status papalis posset humanitus destitui.'

[13] The words run thus: 'Tantum autem abest, ut haec Summi Pontificis potestas officiat *ordinariae ac immediatae* illi episcopalis jurisdictionis *potestati*, qua episcopi, qui positi a Spiritu S. (Act. xx. 28) in Apostolorem locum successerunt (Trid. Sess. xxiii. c. iv. de Ord.), tamquam *veri pastores* assignatos sibi greges, *singuli singulos*, pascunt et regunt, ut eadem a supremo et universali Pastore asseratur, roboretur ac vindicetur.'

§ 2.

The Vatican Council has imputed no new powers to the Pope. Before the Council no one hesitated in using the expressions commonly employed by theologians. Thus we read in a paper that obtained the prize[1] offered by the Theological Faculty of Munich in 1868: 'It is lawful for the Pope to place reservations upon the jurisdiction of bishops.' Whosoever can place reservations upon the jurisdiction of another holds the supreme authority. This power of supreme pastor possessed by St. Peter is an ordinary and immediate power, since it is derived from the lips of Christ Himself. According to the doctrine of the primitive Church, the inheritance of this supreme power conferred upon St. Peter has descended upon the Bishop of Rome. By virtue of this immediate power of jurisdiction, which extends to all the faithful, the Pope has authority to retain and to forgive the sins of the faithful over the whole world.[2] Schulte used to have no hesitation in ascribing to the Pope the plenitude of the power of the priesthood conferred by Christ Himself,[3] and no objection was made when Phillips wrote:[4] 'Christ has given to Peter the full, supreme, and ordinary power extending over the whole Church.'[5] Yet now it is made a difficulty that the Council has adjudged to the Pope the ordinary and immediate power as well over all Churches as over all pastors and all the faithful.

[1] Hausmann, Gesch. der Päpstl. Reservatfälle, Ratisbon, 1868, p. 5 seq.

[2] According to the Conc. Trid. Sess. xiv. cap. vii. de Casib. Reserv.

[3] System des Kirchenrechts, Giessen, 1856, pp. 178, 190.

[4] Kirchenrecht, v. § 201, p. 6.

[5] Even Gallicans, such as Natalis Alexander, recognise the full and ordinary power of the Pope.

§ 3.

One of the chief allegations against the third chapter of the Vatican Constitutions is this: that it ascribes to the Pope the ordinary and immediate power of jurisdiction in every diocese, together with the fulness of supreme power; and it being inconceivable that there should be two possessors of the ordinary and immediate power of jurisdiction for each diocese, two bish-

two spouses, the words can only be taken to imply that the Pope is the bridegroom-general for each and every diocese, consequently is properly speaking its only authorised bishop, and the resident bishop becomes merely a dependent of the Pope, an acting intermediary, charged with some of his powers.[1] But as far as this metaphor of marriage is concerned, it is only a metaphor, and the same conclusions cannot be drawn about the mystical spiritual marriage of a bishop with his diocese as about the natural marriage of a man and woman.[2] In this sense each see must have two spouses—Christ and the bishop. When the Apostles constituted their disciples, Timothy, Titus, and the rest, bishops of certain places, they still exercising their apostolic supremacy, each of these Churches must have had several spouses. The parish priest may also be considered as spiritually espoused to his parish; but this parish forming part of the diocese partakes in the general relation of the latter to the bishop. Secondly, if there were in the same diocese two men having the same spiritual power it would, of course, be irregular and abnormal; but it is not so of two powers existing at the same time, of which one is subordinate to the other. The parish priest also has an ordinary and immediate jurisdiction, which is subordinate to the bishop, and does not exclude his jurisdiction.[3] Bishops have an ordinary and immediate jurisdiction, which is also subordinate.[4] Just as a judge of a court in which cases are first heard is not the less truly a judge because over him are other judges of higher courts, so a bishop is not the less truly a bishop because he is subordinate to the Pope, the Vicar of Christ.

The Pope has been compared by St. Thomas Aquinas to a king in his kingdom, the bishops to the judges in their special cities.[5] As a king may for just causes (for government should, according to St. Thomas, never be arbitrary) displace a judge from his office, so the Pope, when the safety of the Church demands it, can remove a bishop from his see, as Pius VII. did in France after the Concordat of 1801. A king may limit the powers of a judge, and the Pope may, by reservations, partitions of dioceses, and other measures, limit episcopal jurisdiction.[6]

As a king imparts of his own full powers authority to his inferior officers, so the Pope may by his supreme authority transfer full powers to the bishops, in which case the bishops, as the Council of Trent teaches, may act as delegates of the Holy See.

[1] Berchtold, pp. 7, 8.

[2] Innocent III., following still earlier usage, often has recourse to this metaphor, especially about the translation of bishops, for example: l. i. Ep. 326, 335, 447, 490, l. ii. Ep. 278, pp. 291, 306, 422, 456, 845, c. ii. vii. de Translat. Episcop. i. 7, and even calls the spiritual bond in a certain sense fortius quam carnale, that can only be loosed by divina auctoritate (per Christi vicarium). But the translation of bishops shows that this vinculum spirituale can be loosed. Salmeron (Andries, Alph. Salmeronis Doctrina, p. 192) says: 'Vinculum episcopi cum sua ecclesia, quantum est *ex parte utriusque*, indivisibile esse deberet; sed quia *Ecclesiae aedificatio* exigebat, ut ex variis causis solveretur voluit Deus, ut solubile esset per suum vicarium.' In relation to another matter, Salmeron uses this comparison, p. 237: 'Sicut copula matrimonii non tollet vinculum matrimonii, novum inducendo, sed firmat antiquum; ita etiam consecratio non inducit novam et superfluam jurisdictionem . . . . sed stabilit antiquam datam a Papa (confirmante) ante consecrationem.' In the act of appointment of the bishop the Pope appears as ratifying the bond in the place of Christ.

[3] In their censure upon the work entitled La Défense de l'Autorité de N.S. le Pape, par J. de Vernant, Metz, 1658, the Sorbonne made this statement in reference to the proposition, p. 44: 'Les curés ne sont pas immédiatement établis de Jésus-Christ,' and similar ones, pp. 46 seq., 448, 478: 'Hae propositiones, quatenus asserunt vel inferunt potestatem jurisdictionis curatorum non esse *immediate* a Christo, quantum ad institutionem primariam, falsae sunt et decretis S. Facultatis contrariae, salva semper *immediata* episcoporum in praelatos minores seu curatos et plebem subditam auctoritate' (Du Plessis, t. iii. P. i. p. 104). And in 1735 the Sorbonne said: 'Propositio quae tollit ab episcopo immediatum regimen parochiarum suae dioeceseos est ministerii episcopalis eversiva et Verbo Dei contraria' (ib. p. 214).

[4] Thom. in l. iv. d. 17, q. 3, a. 3, sol. 5, ad 3: 'Inconveniens esset, si duo *aequaliter* super eamdem plebem constituerentur, sed quod duo, *quorum unus est alio principalior*, super eamdem plebem constituantur, non est inconveniens, et secundum hoc super eamdem plebem *immediate* sunt *et sacerdos parochialis et episcopus et Papa*.'

[5] S. Thom. in lib. iv. sent. d. 20, q. 4, a. 3, ad 3, quaestiunc 4, sol. 3: 'Papa habet plenitudinem potestatis pontificalis quasi rex in regno, episcopi vero assumuntur in partem sollicitudinis quasi judices singulis civitatibus praepositi.' Cf. in l. ii. dist. et q. ult.: 'Sicut se habet potestas Dei ad omnem potestatem proconsulis: sic etiam se habet potestas Papae ad omnem potestatem spiritualem in Ecclesia.' Turrecrem. Sum. de Eccl. l. ii. c. lxiv.

[6] Cf. Phillips, Kirchenrecht, v. § 220, p. 339 seq.

§ 4.

But this comparison has been violently attacked, because it is said to repudiate altogether the divine constitution of the episcopate as well as the continuance, if not the right, of any apostolic succession.

To this we reply, first, that a comparison should never be stretched beyond the point of comparison, which in this case is the extension of power, and the question of the origin of the power is wide of the mark; secondly, that we must never forget to make the distinction between the divine institution of the episcopate and the appointment of each individual bishop, as well as to distinguish between the succession of bishops in the episcopate and that in the apostolate properly so called.

Bishops are, indeed, successors of the Apostles, as we learn from the Councils of the Vatican and of Trent, but this does not mean that everything that appertained to each individual Apostle appertains also to each individual bishop, each having the same supreme power.[1] They are their successors, not as being the immediate witnesses and ambassadors of Christ furnished with extraordinary powers, but only as ordinary pastors and guardians of the Church. The individual bishop is not the successor of an Apostle as the Bishop of Rome is the successor of St. Peter; but the congregation of bishops with the Pope at its head is the successor of the College of Apostles.[2] The Apostles were not limited to any particular space in the exercise of their power; the bishops are limited to their dioceses, and this limitation is an arrangement rendered necessary by the constitution of the Church.[3] The opinion of theologians is divided upon the question of how far the episcopal authority is derived immediately from God;[4] and this we proceed to inquire into more closely.

[1] The Sorbonne in 1617 censured as follows the proposition of M. A. de Dominis (De Rep. Chr. l. ii. c. i. n. 9, 13, 15), Prop. xiv.: 'Sicut Apostoli simul et in solidum aristocratice curam gerebant Ecclesiae cum potestate aequali et universali, ita episcopi omnes simul et in solidum eandem regunt Ecclesiam, singuli cum plena potestate. *Haec prop. est haeretica et schismatica quoad ultima verba* "singuli cum plena potestate."' Prop. xv.: 'Episcopi dicuntur Apostolorum successores, quia in

eorum officio, quod erat Apostolorum omnium commune, succedunt omnes omnibus in solidum. *Haec prop. est haeretica et schismatica cum agat de jurisdictionis apostolicae potestate.*' Prop. xvi.: 'In potestate universali succedunt episcopi non modo universi, sed etiam singuli. *Haec prop. haeretica est et schismatica, ut duae praecedentes*' (Du Plessis, Coll. Jud. t. ii. P. ii. p. 106).

[3] Phillips treats this subject in detail, Kirchenrecht, i. § 23, p. 167 seq. Passaglia, de Ecclesia Christi, lib. iii. c. ix. seq., c. xxviii. seq., pp. 124 seq., 329 seq. Cf. Alex. Halens, p. 4, q. 49, membr. 6, a. 3, § 2. Thom. in l. iv. sent. d. 19, q. 1, a. 3, ad 1. Cajetan, t. i. tract. 3, pp. 42, 43. Dom. a Soto, in l. iv. d. 20, q. 1, a. 2. Bellarmin. de Rom. Pontif. l. iv. c. xxv. Petav. de Eccl. Hierarch. l. i. c. v.; l. iv. c. vii. Suarez, de Fide, disp. 10, sect. 1, n. 4. Pignatelli, Consult. Canon. t. i. cons. 14, n. 3 seq. p. 19 seq. Natal. Alexander, H. E. saec. 1, diss. iv. § 4, n. 3, ad 3, t. iv. p. 240. Petrus Ballerini, de Potest. Eccles. c. i. § 4, p. 15 seq. ed. Monast. Schenkl, Syntagma Jur. Eccles. Salisb. 1786, § 36, note 2. Card. Gerdil, Apolog. Compend. del Breve super Soliditate, Opp. ed. Rom. xiii. pp. 135, 136. Also Pichler, Gesch. der Kirchl. Trennung, ii. p. 587 seq. § 6.

[4] Gerdil, Animadv. in Febron. posit. xxv. Opp. xiii. 305: 'Equidem positi sunt episcopi regere Ecclesiam Dei, non ut singuli toti Ecclesiae regendae incumberent omniaque munia; quae ad Ecclesiae regimen pertinent, singuli obirent, quod sine perturbatissima confusione fieri non posset, sed ut singuli eam portionem regerent, quae sibi cuique obtigisset, idque non privato cujusque judicio et arbitrio, quod nunquam licuit, sed ex legibus, quibus ecclesiastica disciplina continetur, atque ex ejus supremi capitis auctoritate, quam ad continendos in ordine et officio episcopas atque ad unitatis vinculum constringendum prorsus necessariam Barthelius agnovit.' Against Sarpi's theory, vid. Pallavicini, Hist. Conc. Trid. l. vi. c. iii. n. 1 seq.; l. xii. c. iii. n. 1 seq. Cf. also Bolgeni, l'Episcopato, t. i. c. vi. art. 3, p. 212 seq. ed. Orvieto, 1837.

[5] Gerson, de Potestate Eccles. Opp. ii. p. 238, de Statibus Eccles. Consid. 2: 'Status praelationis episcopalis in Ecclesia quoad sui collationem primariam fuit *immediate* a Christo datus primis Apostolis, sicut status papalis Petro, licet postmodum talis collatio fieri potuerit et facta sit in successoribus *per homines*.'

Part II. How far Episcopal Authority is derived immediately from God.

§ 1. Distinction between the power of order and the power of jurisdiction. § 2. Jurisdiction received from the Pope; Council of Trent. § 3. Formula of preconisation. § 4. Opinion of theologians. § 5. Lainez. § 6. Objections answered. § 7. The appointment of bishops. § 8. The Councils of Florence and Basle; authority of the Councils. § 9. Bishops not merely advisers, but judges. § 10. Neither the Vatican Council nor the Council of Trent has decided whether episcopal jurisdiction is derived from the Pope or immediately from God.

§ 1.

There is a distinction made in the Church between the power of order (potestas ordinis) and the power of jurisdiction (potestas jurisdictionis).[1] The first is conferred by consecration, the second by the mere appointment. He who dispenses the power of order is only an instrument, but in imparting the power of jurisdiction he exercises authority and dominion. The former can neither be changed nor lost; the latter can be changed, restricted, or removed.[2] If an heretical bishop exercises his power of order—that is if he baptises, or ordains, or says Mass—these acts are all valid, whilst acts of jurisdiction exercised by such a one are invalid,[3] because the power has been withdrawn from him. If, for example, a suspended priest dispenses the Sacrament of Penance, his absolution is generally invalid, because in dispensing the Sacrament of Penance he exercises not merely the priestly power, but also the power of jurisdiction, and of this his suspension has deprived him. Further, the episcopal power of order can exist without the power of jurisdiction, as, for example, in the case of a bishop consecrated merely for episcopal acts.* And conversely, jurisdiction can be exercised without orders, as by a vicar capitular in a vacant see, or by a bishop nominated by the Pope, but not yet consecrated.[4]

By ecclesiastical laws, by Councils, and by the Pope, the power of bishops in the matter of jurisdiction may undergo, and has undergone, many changes. But that which is received immediately from Christ must be abiding and unchangeable. Theologians teach that the power of order of bishops proceeds immediately from God; not so the power of jurisdiction, for this it is given to men to confer. If the power of order and the power of jurisdiction were indivisible, if the latter were contained in the former, or both were equal in origin, the power of jurisdiction in the case of all bishops must be equal as the power of order is equal; there could be no metropolitans or patriarchs,[5] and the power of jurisdiction could no more be lost than the power of order. The episcopal power of jurisdiction

* *i.e.* Confirmation, ordination, and certain blessings.

is therefore not derived immediately from Christ in so far as it exists in individuals; it has been *established* by Christ, but is not conferred immediately by Him upon *individual bishops;* it is imparted to them by the Head of the Church or bishops whom he has authorised. Thus the unity of the episcopate, so much insisted on by the Fathers, is fully upheld; the Holy See is head, root, spring, origin of the spiritual authority;[6] this agrees with the saying of Optatus of Milan and others, that St. Peter was given the keys of the kingdom of heaven that he might impart them to others. It agrees also with the rights of the Head of the Church to judge and remove bishops, to found new bishoprics, to divide and unite others, or to increase or lessen their power and dignity.

[1] S. Thom. 2, 2, q. 39, a. 3, in l. iv. d. 19, q. 1, a. 3. Gerson, de Potest. Eccles. et Orig. Jur. Opp. ii. 225 seq. Cf. Schwab Gerson, p. 723. Card. Gerdil, de plenitudine potestatis episcopalis an et quomodo singulis episcopis tribuenda, Opusc. iii. de Lire; Opp. t. xi. p. 117 seq.

[2] Lainez ap. Pallavic. l.c. n. 5, ap. Raynald. a. 1562, n. 124: 'Potestas igitur ordinis a Deo pendet prout consecratio et est immutabilis. In alia, quae jurisdictionis est, occurrit etiam potestas hominis, ideoque variatur saepius et auferri potest ab eodem homine non materia solum, sed etiam potestas. Et quamvis jurisdictionis omnis in universum auctor sit Deus, tamen illam in S. Pontifice tamquam in fonte collocavit, a quo alii omnes eam hauriant, sicut dominari animantibus et terrae a Deo est, huic vero vel illi loco praesse aliunde hoc dominium pendet aliisque causis adscribitur.' According to Salmeron (vide J. B. Andries, Alphonsi Salmeronis Doctrina de Jurisdictionis Episcopalis Origine ac Ratione, Mogunt. 1871, sect. 1, c. iii. pp. 66, 67) the 'potestas ordinis=facultas, qua quis potest exequi quosdam actus eminentes in Ecclesia, qui vel simpliciter vel saltem ex ordine (ordinarie) non possunt fieri a non consecrato' is contrary to the 'potestas jurisdictionis=praelatio quaedam sive superioritas per quam clericus dirigit sibi subditum fidelem in vitam aeternam secundum legem divinam vel canonicam per actus quosdam, qui etiam a non consecrato exercere possunt.' Cf. Lainez ap. Pallav. l. xix. c. vi. n. 6 seq.

[3] Gerdil, l.c. p. 118: 'Discrimen ex eo petendum, quod *sacramenta*, tametsi hominum ministerio peragantur, vim tamen efficiendi habent a Deo, quo fit, ut si quis *ordinis* potestate pollet, cetera adhibeat, quibus sacramenta illa constant, nihil jam impressam a Deo efficientiam cohibere valeat. Secus quod attinet ad *regimen*. Nam etsi episcopatus ad Ecclesiae regimen sit a Christo institutus, non ex eo fit, ut quisquis episcopalem ordination susceperit, hoc ipso regendi munus explicare valeat. Quid enim si haereticus ab haeretico in episcopum ordinatur vel schismaticus a schismatico? Quid si Catholicus etiam quod et factum quandoque accepimus sic ordinatur, ut nulli ecclesiae praeficiatur? Quid si pulsus a

sede sua episcopus in alienam dioecesim immigraverit, num jure suo in ea regendi officium assumet? Quibus plane liquet, potestati ordinis non ita cohaerere facultatem regiminis, ut sejungi ab ea nequeat. Cujus rei summa haec est, quod *ordinis potestas* per sese constare potest velut *absolutum* quiddam et perfectum, nec aliud requirit praeter subjectam materiam aptam sacramento, in quo vim suam exerat. Contra *regiminis facultas*, ut et omnis praefectura, in eorum genere est, quae *referuntur* seque habent *ad aliud extrinsecum* quod nisi adsit, nec illa esse aut intelligi possunt, velut nec pater esse aut intelligi potest, cui non sit filius, aut dominus, qui servum, aut patronus qui clientem non habeat.'

[4] Bouix, Tract. de Principiis Juris Canon. P. iv. c. iii. § 2, p. 425 seq. ed. Monast. 1853. The Faculty of Cologne censured in 1618 this proposition of M. A. de Dominis—'Quando auferetur tota jurisdictio indigno .... tunc respondeo etiam ordinem auferri'—as a 'propositio plus quam falsa et haeretica' (Du Plessis, t. iii. P. ii. p. 210).

[5] Gerdil, l c. pp. 123, 124: 'Sed ex ipsa remotiori antiquitate solidior quaedam suboritur consideratio, quam et ipse Thomassinus opportune attingit.... Clamant sc. adversarii, episcopos Apostolorum successores esse idque .... concedimus. At *remoto Petro* pares certe planeque aequales ceteri fuere Apostoli nec unus aut plures etiam praerogativam ullam sibi arrogare poterant aut vindicare, vi cujus alterum quempiam obstrictum sibi aut ullo gradu inferiorem haberent. Igitur et episcopi, quatenus Apostolorum successores vi episcopalis ordinationis, quam aequalem omnes perinde suscipiunt, in pari aequalitatis gradu constituuntur, unus parque in omnibus episcopatus, ut nil plus juris uni quam alteri episcopalis ordinatio tribuere valeat. *Unde ergo graduum distinctio*, vi cujus, prout ab Ecclesiae primordiis factum est, unus episcopus pluribus aliis episcopis quocunque tandem nomine praesideret? *Non a jure divino:* quippe ordo episcopatus, ut ipsimet sentiunt, unus est et par in omnibus. *Non ab universali consilio:* quippe longe jam ante invaluerat ea distinctio, quam de cogendo universali consilio cogitaretur. *Non a provincialibus synodis:* quippe provinciarum distinctionem antecedere debuit ipsa graduum distinctio, qua unus in definita quadam regione cetéris ejusdem provinciae episcopis praeesset. *Non ex pacto convento inter nonnullos episcopos*, quibus commodum visum esset hanc hierarchiae formam instituere: nam nec isti minuere poterunt aut alii subjicere auctoritatem sibi divinitus tributam, nec praeter divinum institutum alterius cujusvis auctoritatem amplificare, aliunde nec successoribus eam legem praescribere potuissent, cui se ipsi sua voluntate subjecissent. Sed jam redeat providum in fundanda Ecclesia divinae sapientiae consilium, omnis evanescit obscuritas atque aperta se prodit quaesitae distinctionis origo. Chr. videl. cum uno instituendo episcopatu *pares potestate ordinis* episcopos omnes esse voluit, unum tamen velut *supremum caput in potestate regiminis* ceteris omnibus praetulit. Hinc facile intelligitur, quemadmodum *ex hoc apostolicae cathedrae principatu tamquam primario fonte* superioris hujusce auctoritatis jura *Pontificio instituto* in alias sedes cum temperata discretione potestatis manaverint factumque sit, ut hac inducta graduum inter antistites aptissima distributione ecclesiastica hierarchia ordinatissimam castrorum spiritualium formam, speciemque praeseferret.' St. Thomas, l. ii.

sent. d. ult. q. ult. says briefly: 'Ab ipso Papa gradis dignitatum et disponuntur et ordinantur. Unde ejus potestas est quoddam Ecclesiae fundamentum, ut patet ex Matth. xvi. 18.'

• Benedict XIV. cites the Epistle of Innocent I., ad Episc. Carthag. Concil. (Hard. i. 1025) n. 1, in which he praises the bishops as 'scientes quid debeatur Apostolicae Sedi; cum omnes hoc loco positi ipsum sequi desideremus Apostolum (Petrum) *a quo ipse episcopatus et tota auctoritas nominis hujus emersit.*' Also the Ep. ad Victric. 2, n. 2, and before him Siricius, Ep. 5, ad Episc. Afric.: '*per quem et Apostolatus et episcopatus in Christo coepit exordium.*' The African bishops wrote to Pope Theodore (Hard. iii. 734) that the Holy See was the 'fons, de quo rivuli prodeunt affluenter, universum longissime irrigantes orbem Christianorum.' Leo the Great says with even greater clearness, Ep. 10, ad Episc. Prov. Vienn. c. i. (c. vii. d. 19): 'Hujus muneris sacramentum ita Dominus ad omnium Apostolorum officium pertinere voluit, ut in beatissimo Petro Apostolorum omnium summo *principaliter collocarit, ut ab ipso, quasi quodam capite, dona sua velit in corpus omne manare*, ut exsortem se mysterii intelligeret esse divini, qui ausus fuisset a Petri soliditate recedere.' Benedict remarks on these words: 'Idque eo sapientissimo consilio a Christo D. factum existimat.' D. Thomas, l. iv. c. gent. c lxxvi.: 'Ut hoc continuo et quasi perenni influxu jurisdictionis a capite in membra firmior et solidior esset omnium cum illo, nexus et, melius conservaretur unitas Ecclesiae. Soli, ait Angelicus, n. 4, loquens de Christi promissione facta Petro, promisit: *Tibi dabo claves regni coelorum*, ut ostenderetur potestas clavium per eum ad alios derivanda ad conservandam Ecclesiae unitatem.' The same arguments as those of Benedict are used by St. Bonavent. Opusc. Quare fratres minores praedicent, Opp. t. vii. p. 340, ed. Lugd. 1668. Bellarm. l. iv. de Rom. Pont. c. xxiv. et xxv. Vargas, in toto opere de jurisdictione episcoporum. Suarez, de Leg. iv. 4 p. tot. Fagnan. in c. Perniciosam, n. 20. usque ad finem, tit. de off. ordin. We may also cite the words of Leo the Great, Serm. iv. de Natal. ips. c. ii.: Petrus 'ab ipso omnium charismatum fonte tam copiosis est irrigationibus inundatus, ut, cum multa solus acceperit, nihil in quemquam sine ipsius participatione transierit .... si quid cum eo commune ceteris voluit esse principibus, numquam nisi *per ipsum* dedit quod aliis non negavit.' Cf. ib. c. iv. Here also St. Cyprian's words, de Unit. Eccl. c. ii., may be referred to, where it is said, with regard to a quotation from St. Matt. xvi. 18 seq. and St. John xx. 21 seq.: 'Super unum aedificat Ecclesiam .... ut unitatem manifestaret, unitatis ejusdem *originem ab uno incipientem* sua auctoritate disposuit.' Cf. Ep. 73, ad Jubajan.; Ep. 55, ad Cornel. Also the words of the Fathers of Aquileja, 381, Ep. ad Imp. Constant. p. 554: 'Inde enim (ab Ecclesia Romana, totius orbis capite) et in omnes venerandae communionis jura dimanant.'

§ 2.

If episcopal jurisdiction were not derived immediately from the Pope, it must come from Christ in the act of the consecration of a bishop, or from Christ in some other act external to

the act of consecration, or from some other source. But none of these can be asserted. Not the first, since before his consecration the bishop elect may (as soon as his election has been confirmed by the Pope) exercise the power of jurisdiction. Not the second, for there is no other act besides the act of consecration by which any power is conferred immediately from Christ upon the bishop; such an act would have to be clearly indicated. Lastly, the supposition of any other source would be contrary to the Catholic faith. Although formerly the bishops were chosen by the people, whose choice was confirmed by the higher bishops (metropolitans, primates, patriarchs), the choice of the people conferred no power, and the higher prelates were not appointed immediately from God, but held their power from the Church, and in particular from the Holy See.[1] Thus episcopal jurisdiction can spring directly only from the Pope.

The Council of Trent has spoken on this point. It declares that a bishop can be a true bishop only if he has received the requisite consecration and mission from ecclesiastical authority. Mere election by the people or by the civil power or self-investiture of the office makes a man not a pastor and servant of the Church, but a thief and a robber that entereth not by the door[2] (John x. 1). On the other hand, according to the same Council, those are true bishops who have been appointed by the Roman Pontiff.[3] Thus the mission of a bishop proceeds from the Pope; it is not merely the assignment to him of a certain dominion, of a diocese, but the act by which actual jurisdiction is conferred and subjects with certain rights and duties placed under him. The form and manner of doing this may have varied at different times; but the act of appointment can never have been lawful if the Holy See rejected it, and did not agree to it either expressly or tacitly.[4]

[1] On this subject, Leo M. Ep. 14, ad Anastas. Thessalon. c. xi. says: 'Cum omnium (Apostolorum) par esset electio, uni tamen datum est, ut ceteris praeemineret. De qua forma episcoporum quoque est orta distinctio, et magna ordinatione provisum est, ne omnes sibi omnia vindicarent, sed essent in singulis provinciis singuli, quorum inter fratres haberetur prima sententia, et rursus quidam in majoribus urbibus constituti sollicitudinem susciperent ampliorem, per quos ad unam Petri sedem

universalis Ecclesiae cura confluerct et nihil unquam a suo capite dissideret.'

[2] Trid. Sess. xxiii. de Ord. cap. iv. et can. 7.

[3] Ib. can. 8. Cf. Pallav. l. xxi. c. x. n. 4.

[4] Gerdil, l.c. p. 127: 'Ad jurisdictionem requiritur subjectae plebis assignatio, quae fit non divino, sed humano jure. Hujusce porro assignationis via et ratio, etsi diversis locis ac temporibus pro diversitate disciplinae varia quandoque fuerit, nulla tamen legitima esse potuit, quae Sedi Apostolicae probata non sit, ex cujus consensione pro plenitudine potestatis per universam Ecclesiam sese fundentis vim roburque acceperit.' Cf. Thomassin, P. ii. l. i. c. xlvii. n. 3: 'Episcopi obtinent illi quidem immediate a Christo jurisdictionem suam' (which he endeavours to establish, P. i. l. i. c. l. n. 1 seq.), 'sed non ab illo immediate consecuti sunt territorium hoc suum et peculiarem dioecesim, cum haec partito facta fuerit ab Ecclesia volventibus saeculis nec fieri potuerit aut perpetuari, nisi consensione capitis, in quo est cardo et centrum eccles. unitatis.'

§ 3.

This is quite in accordance with the formula used for the preconisation of bishops, in which by *virtue of the power of God, of the Prince of the Apostles, and of the ruling Pope*,[1] those elected or nominated are confirmed by him; they are appointed to sees and intrusted with the care and administration of them in spiritual and temporal matters. Also in accordance with this is the similarity of the jurisdiction of the ordained priest, who after his ordination must be approved, that is, have faculties given him, by the bishop before he can absolve. He who can withdraw power must have the right of conferring it.[2] The Pope may remove bishops; he must also be empowered to appoint them.

[1] The words in the Caeremoniale Romanum are: 'Auctoritate omnipotentis Dei et b. Apostolorum Petri et Pauli ac nostra providemus Ecclesiae N. de persona dilecti filii N.N., praeficientes illi Ecclesiae in episcopum et pastorem, curam et administrationem illius Ecclesiae in spiritualibus et temporalibus eidem plenarie committendo in nomine Patris,' &c.: or, 'electionem de persona dilecti filii N.N. electi ad ecclesiam N. canonice factam confirmamus et approbamus, praeficientes eum illi Ecclesiae in episcopum,' &c.

[2] Reg. J. V. 41, c. i.: 'Omnis res, per quascunque causas nascitur, per easdem dissolvitur.'

§ 4.

Before the Council of Trent this opinion was predominant in the schools amongst both the secular and regular clergy, and

throughout Christendom.[1] The supporters of the contrary opinion were fewer; they differed much amongst themselves, and were more or less near to the other view. It was discussed at the Council of Trent whether the jurisdiction of bishops was derived immediately from Christ or from the Pope. Benedict XIV. declared that the latter opinion was more in accordance with reason and authority. At Trent the majority of the bishops expressed themselves of the opinion that episcopal jurisdiction comes from the Pope. The prelates who opposed this started from various points of view.

[1] Amongst its supporters are: 1. Alexander of Hales. 2. Albertus M. 3. St. Bonaventure. 4. St. Thomas. 5. Richard de Mediavilla. 6. Duns Scotus. 7. Durand a St. Porciano. 8. Hervaus Natalis. 9. Petrus de Palude. 10. Alexander a St. Elpidio. 11. Augustine Triumphus. 12. John Bacon of England, the passages from Andries Salmeronis, Doctrina, pp. x.-xii. 112-117. 13. Alvarus Pelagius, De Planctu Eccl. i. c. lviii.; Roccab. Bibl. m. Pont. iii. 166. 14. Aegidius Romanus, Opusc. c. Exemt. c. ii.; Episcopos per Pontificem vel per Auctoritatem ejus assumtos in Partem sollicitudinis, Lib. de Renunc. Pap. c. viii. 15. Simon Fidatus de Cassia. 16. Thomas de Argentina. 17. Petrus Bertrandus. 18. Thomas Waldensis. 19. John of Capistran. 20. Vincens Ferrerius. 21. John Cappreolus. 22. John Turrecremata. 23. St. Antonin. 24. Laurentius Justiniani. 25. Dionysius Carthus. 26. Hieronymus Savonarola. 27 George Scolarius. 28. Gabriel Biel, Andries, pp. xi.-xiii. 117, 118. 29. Card. Cajetan. 30. Alphons. Tostatus, ib. pp. 117, 118. 31. Sylvester Prierias, De Juridica et Irrefrag. Verit. Rom. Eccl. Roccab. xix. 235 seq. 246. 32. Stanislaus Hosius. 33. Reginald Pole. 34. Thomas Campeggius. 35. Caspar Contareni. 36. William Lindanus. 37. Robert Arboricensis. 38. John Faber. 39. John Fisher. 40. Nicholas Sander. 41. John of Louvain. 42. Driedo. 43. Jacob Latomus. 44. Thomas Stapleton. 45. John Eck, Andries, c. pp. xvii. xxviii. 118. 46. Abraham Bzovius. 47. Balth. Nardus. 48. Baldwin Junius. 49. J. Gretser. 50. Fr. Macedo. 51. Fragosa. 52. Dom Maria Marchese. 53. Angelus Petrica. 54. Boverius. 55. Petrus Labat. 56. Vincent Ferre, O.S.D. 57. Em. Schelstrate, Pichler, ii. pp. 705-707. 58. Salmeron. 59. Vargas. 60. Maucler. 61. Canus. 62. Dominicus a Soto. 63. Bannez. 64. Blosius. 65. Duval. 66. John a Celaja. 67. Charlas. 68. Coeffeteau. 69. Barthol. Urbinas, O.S.A. 70. Peregrin. Nasellus of Padua. 71. Malder. 72. Lainez. 73. Suarez. 74. Bellarmine. 75. Gregory of Valencia. 76. Franciscus Amicus. 77. Petavius, Andries, p. xix. seq 118. 78. Muzzarelli. 79. Bennettis. 80. Viator a Cocaleo, ib. p. xxii. 81. Benedict XIV. 82. Card. Vincent Petra, t. ii. Comment. in Const. ap. Const. 4, Innoc. III. n. 35, 36, p. 118 seq.: 'In hoc dicitur quod jurisdictio absoluta et in se considerata sit immediate a Christo quoad vero jurisdictionem in actu secundo seu assignationem subditorum a summo Pontifice, vel, at com-

maxime dicunt, quoad ordinem immediate a Deo episcopalis potestas quoad jurisdictionem vero a Papa.' 83. Prosper Fagnanus, in c. i. Perniciosam, i. 31, n. 30 seq. 84. Kilber, Theol. Wirceb. t. i. p. 469-476, tract. i. disp. ii. c. iii. a. 3, n. 180 seq. 85. Schmalzgrueber, in lib. i. Decret. tit. 31, § 4, n. 26. 86. Reiffenstuel (in a. l. § 3, n. 69 seq.), who quotes also Pirrhing, Sannig, Engel, and others. 87. Phillips, K.R. ii. § 76, pp. 132-135, coll. i. § 13, p. 96, v. § 221, p. 363 seq., where reference is also made to Bolgeni, l'Episcopato, p. i. c. vii. n. 81 seq. 88. Westhoff, not. in Petri Baller. Vindic. Potest. Pontif. c. v. p. 184, ed Monast. 1847. 89. Beidtel, Das Canon. Recht, p. 523 seq. 90. Maaszen, Der Primat des Bischofs von Rom. Bonn, 1853, p. 138, n. 4.

§ 5.

The General of the Jesuits, Lainez, in his speech at Trent, argues the point in detail. The power of order, he says, is received by individuals always immediately from God. The power of jurisdiction is received immediately from God only in certain instances, as in the case of St. Peter and his successors and the Apostles collectively;[1] but in the case of other bishops it is received immediately from the Pope, who can change and limit their jurisdiction. What God willed to be abiding and unchanged He effected Himself; but He has ordained persons and instruments to effect those things which should be subject to change.[2] The Pope, says Lainez, when he gives to a pastor the sheep to feed, gives him also authority over them. Jurisdiction exists before consecration. As all bishops are consecrated alike,[3] all would, if the jurisdiction came from the consecration, enjoy it equally.[4] If the bishops derived immediately from God their jurisdiction limited to certain places, as the jurisdiction of bishops is limited, it would follow as a consequence that the partition of dioceses was divine also, so that the Pope could neither extend nor circumscribe them. If on the contrary the bishops received from God their jurisdiction not confined to any particular place, it would extend over the whole earth, and there would be as many Popes as bishops. If it is said that Christ confers jurisdiction upon the bishops, and the Popes allow of its exercise, this is ascribing to our Lord the conferring of an incomplete and inoperative authority. Either the words 'Feed My sheep' are only addressed to St. Peter and his successors, ir

which case these may be regarded as the source of all jurisdiction; or they apply to all bishops, and then it becomes untrue to say that the object of this jurisdiction was assigned to the Pope for distribution; and the unity of the Church is broken.[5]

[1] This is a point of controversy, for many assert that jurisdiction was conferred upon the Apostles by Christ 'per Petrum.' Salmeron, Andries, op. cit. sect. 1, c. iv. p. 72 seq.

[2] Pallavic. l. xviii. c. xv. n. 3, 4. Rayn. d. 1562, n. 124. Salmeron treats in detail the distinction between the wide and narrow sense of the jus divinum. Cf. J. B. Andries, Alphonsi Salmeronis Doctrina, Mogunt. 1871, sect. 1, c. i. ii. pp. 5-56.

[3] S. Bonavent. in l. iv. sent. d. 24, q. 3. S. Thom. Sum. 2, 2, q. 29, in l. iv. d. 24, can. Ita Dominus, dist. 19.

[4] Raynald. l.c.; Pallavic. l.c. n. 5, 6.

[5] Pallavic. l.c. n. 15-17. Salmeron (Andries, l.c. p. 90 seq.) argues upon the text, John xxi. 15 seq. thus: 'Si omnes Christi oves Petro sunt assignatae, ut ab eo *tamquam Christi vicario* pascerentur ac gubernarentur, efficitur, ut quicunque *determinatas aliquas* pascendas habeat oves, nonnisi *per illum* earum pascendarum curam debeat assumere. Neque enim dubium est quin mitteret falcem in messem alienam qui absque ejus auctoritate pasceret oves fidei suae non creditas.'

§ 6.

Objections were made to the view held by Lainez, which he also answered. One objection was: 'The Apostles receive their jurisdiction immediately from Christ. Therefore, as successors of the Apostles, the bishops also receive their jurisdiction immediately from Christ.' To the premise Lainez fully agreed, although others, such as Salmeron, held that jurisdiction was conferred upon the Apostles by Christ through St. Peter; but he denied the conclusion. It might be no less logically argued: Adam's body was created immediately by God; therefore so also are the bodies of his descendants. The bishops are not successors of the Apostles in every relation, and with exactly equal rights. The Church never recognised in the bishops of Antioch and Ephesus that supreme power enjoyed by the Apostles Peter and John who at first were placed over them. When the Church had been established and regulated by the Apostles, the extraordinary powers of the apostolic age were no longer necessary to her. The Pope alone has inherited th

supreme authority of St. Peter in a manner in which no other bishop has inherited the power of any other of the Apostles.[1]

To the objection, that according to St. Basil and St. Ambrose the words 'Feed My sheep'[2] were spoken to all the Apostles, and therefore were to be referred to all bishops,[3] Lainez replied: Doubtless the words were spoken to all the Apostles; but *in St. Peter alone.* If the words were to be understood as being addressed primarily and directly to all the Apostles, the primacy would be denied, which is heresy.[4] St. Peter indeed was unable to rule the Church by himself; he had need of the other Apostles; but he was not subject to them; they were not to be his pastors—to feed him. Holy Scripture too shows that the jurisdiction of bishops was limited (1 Peter v. 2; Tit. i. 5). Finally, there may be many degrees of the office of pastor, as Christ, in a far higher sense than His Apostles, feeds His flock and is its Shepherd (John x. 11-14).

The words (Matt. xviii. 18) in which our Lord conferred upon His Apostles the power of binding, of loosing, and those (John xx. 22) in which He imparts to them the Holy Ghost for the remission of sins, apply of course to the Apostles and their successors. But to say the power of jurisdiction, like the power of order, was by these words granted equally to St. Peter and the other Apostles, is to assert the equality of all the Apostles and to deny the primacy. It may be said that these words convey the power of order as far as conferring the sacramental absolution is concerned, without the full power of external jurisdiction. If, however, they refer to jurisdiction at all, it is to a jurisdiction to be imparted at some future time. When Christ spoke these words He had only promised, not yet instituted, the primacy. This was the answer given by Lainez to a third objection. To a fourth he replied as follows:

Although bishops were appointed by the Holy Ghost (Acts xx. 28) to rule the Church of God, it does not follow that the Holy Ghost should directly appoint each individual to this or that particular see.[5] A reference to the parable (Matt. xxiv. 45) in which a bishop is called a faithful and wise servant whom the Lord hath appointed over His family, because these word-

are used in the consecration service, proves nothing. It suffices for the parable and its interpretation that the bishop is placed by God, whether mediately or immediately, over His family. An objection is made: 'That according to 1 Tim. iii. 5, the episcopate and the authority to govern are inseparably connected, and that to govern is the same thing as to have jurisdiction.' But in this passage St. Paul does not say whether the power of order and the power of jurisdiction can or cannot be separated. Neither does he say whether the bishop's power of jurisdiction be imparted directly by God; neither does he indicate the source whence it proceeds. He speaks merely of the qualifications necessary for him to whom it is intrusted.

Granted that some of the Fathers, such as St. Ambrose, St. Basil, and St. Leo, say that bishops and their authority are from God, they nowhere say that this authority is in *all its parts and immediately* from God.[6] Other Fathers say that on the contrary it is derived from the Roman Pontiff. Either the Fathers in this contradict one another—a supposition neither well grounded nor reverent—or we are to understand them to mean that episcopal jurisdiction is derived *from God through the Pope*.[7] St. Bonaventure[8] and St. Thomas[9] taught this doctrine, and among the Fathers, Leo the Great[10] and Gregory the Great,[11] the latter of whom refused the title of universal bishop, calling it unrighteous,[12] but only in the sense imputed to it by the present opponents of the Vatican Council, namely, that of being strictly speaking the sole bishop.[13] The Pope is bishop in his See of Rome, and must therefore leave their sees to the other bishops. He is, however, also bishop of the Universal Church; as such he can investigate and pass judgment upon all matters of ecclesiastical jurisdiction; but he has not the right causelessly to withdraw from bishops the authority which they lawfully possess.[14] He is justly called Bishop of the Catholic, that is of the Universal Church,[15] a title which occurs in the Bull of ratification of the Council of Trent, issued in 1564 by Pius IV.; also previously in the diplomas of Alexander III., A.D. 1162 and 1169, and as early as 1131 in the Privilegium granted by Innocent II. to St. Bernard.[16] Gregory the Great, in opposition to Byzantine

pride, took the title of Servant of the servants of God (Servus servorum Dei),[17] but without intending to merge the dignity of his office in the humility of the appellation ;[18] he only refused the title of 'ecumenical' Pope or Patriarch in the sense in which he understood it. He called it blasphemous when assumed by the Patriarch of Constantinople, whose throne had already been occupied by many heretics, and who took to himself what the Roman Pontiff was not willing to accept.[19] The title of 'universal bishop' was of frequent occurrence as early as the eighth century.[20] In 1413 the Faculty of Paris rejected the proposition of Huss that the Pope was not universal bishop,;[21] and the theologians of Alcala in 1564 rejected the proposition, 'the Pope is not to be styled universal bishop, since St. Gregory refused and abhorred the title,' as a proposition bordering upon heresy; whilst they clearly prove that Gregory the Great rejected the title in another meaning, not in the sense of his having power over the whole Church.[22] The Faculty of Paris in 1565, and that of Cologne in 1617, acted in a similar manner.[23] Here again the weapons of old heretics are used to fight the battle of a new heresy.

[1] Pallavic. l.c. n. 9. Lainez lays down the rule: 'Non requiritur in subrogato natura illius, cui subrogatur, nisi secundum id quod satis est.' Cf. Salmeron, l.c. pp. 91, 92.

[2] M. A. de Dominis asserted, l. i. c. viii. n. 3: 'Quod uni Petro et seorsum dicitur: *Pasce oves meas* mysterium tantum est, ut discant omnes Apostoli et ministri Christi, etiamsi sint innumerabiles unicam tamen omnes et eamdem exercere pasturam et omnes simul ac in solidum unicum eos debere esse pastorem.' The Faculty of Cologne censured this proposition as 'propositio haeretica et Scripturae violenta expositio' (Du Plessis, t. iii. P. ii. p. 198).

[3] The testimony of these and other Fathers is cited in detail by Salmeron, l.c. sect. ii. c. v. pp. 154-159.

[4] Pallavic. l.c. n. 7.

[5] It is certainly concluding too much if from similar texts from Scripture and passages from the Fathers (such as St. Ignatius, St. Basil, St. Chrysostom, Theodoret) without further inquiry the following conclusion is arrived at: 'Est igitur episcoporum potestas *immediate a Christo*. Nihil ergo moror eorum argutias qui controversias, non solum contra haereticos, sed etiam contra orthodoxos plerumque tractant. Phrasim Scripturae loquor et SS. Patrum.' Also Isaac Habert, Archieraticon gr. Paris, 1676, ad P. vii. Lit. Observ. 4, p. 87, who beyond this adds: 'Improbus autem sit veterator, quisquis ex eo calumniabitur nos S. Pontific'

supra omnes episcopos divinitus institutam potestatem labefactare, quum illam eo firmius stabiliusque fundatam profiteamur quo apertius exponimus, institutos ab ipso Christo immediate ceteros episcopos hac lege divinoque jure, ut Petri sese subordinatos ac subditos intelligant.'

[6] For particulars on this point vide Salmeron, l.c. sect. ii. c. vi. pp. 168-173, 177-179.

[7] Pallavic. l.c. n. 12.

[8] Bonavent. Breviloq. P. vi. c. xii. p. 250, ed. Hefele, iii.: 'Qui Papa merito appellatur, tamquam unus primus et summus pater spiritualis omnium patrum imo (pastor *in ed. Ven.*) omnium fidelium et hierarcha praecipuus sponsus unicus, caput indivisum, Pontifex summus Christi vicarius, *fons et origo, regula cunctorum principatuum ecclesiasticorum a quo tamquam a summo derivatur ordinata potestas* usque ad infirma Ecclesiae membra, secundum quod exigit praecellens dignitas in ecclesiastica hierarchia.'

[9] S. Thom. in l. iv. sent. d. 24, q. 3, a. 2. Durand. Comment. in l. iv. d. 24, q. 5.

[10] Vide passages cited, § 1, note 6, and § 2, note 1, supra.

[11] Greg. M. ad Joh. Subd. l. ii. Ep. 30 (c. x. d. 63): 'Quanto Apostolica sedes Deo auctore cunctis praelata constat ecclesiis, tanto inter multiplices curas et illa nos valde sollicitat, ubi ad consecrandum antistitem nostrum expectatur arbitrium.'

[12] Greg. M. l. v. Ep. 18, 19, 20 seq. l. vii. Ep. 30, and elsewhere.

[13] Cf. Salmeron, l.c. pp. 196, 197. Thomassin, P. i. l. i. c. xi. Ballerini, l.c. c. iii. n. 11, p. 174.

[14] Pallavic. l.c. n. 13.

[15] Pallavic. l. xix. c. xv. n. 3. Further transactions, ib. l. xxi. c. iv. n. 12 seq.

[16] Bern. Ep. 352, Migne, clxxxii. p. 556.

[17] Joh. Diac. Vita Greg. M. l. ii. c. i.

[18] Greg. M. l. ix. Ep. 59.

[19] Greg. M. l. iv. Ep. 32, ad Mauric. Imp.

[20] Cod. Carolin. Ep. 15, p. 143, ed. Cenni.

[21] Natal. Alex. H. E. saec. xv. et xvi. c. ii. art. 3, n. 6, t. xvii. p. 167. The Sorbonne used it in the year 1388. Du Plessis, t. i. P. ii. p. 85.

[22] Du Plessis, t. iii. P. ii. pp. 105-107.

[23] Ibid. t. iii. P. ii. p. 194, n. 6.

§ 7.

It was supposed that the strongest argument against Lainez was that the doctrine he upheld was unknown for the first ten centuries, and that during that time there was no trace of any interposition on the part of the Pope with regard to the making of bishops.[1] But his interposition is shown in the action of provincial bishops, archbishops, and others.[2] No one has maintained that each bishop was appointed immediately by the

Pope. The Pope certainly exercised authority over the patriarchs of the East;[3] the jurisdiction of these patriarchs was in every case derived from Peter.[4] In many countries the Popes exercised a great deal of their authority through their vicars-apostolic, the primates and other hierarchs who in their name appointed and confirmed bishops,[5] whilst in other countries, as in Italy for example, the appointment was made directly.[6] In countries where heresy was predominant the Popes interfered personally. Thus Martin I. in 649 gave Bishop John of Philadelphia, by virtue of the supreme power conferred upon him by Christ through St. Peter, authority in the patriarchate of Antioch and Jerusalem, as legate extraordinary of the Holy See, to appoint bishops, priests, and deacons.[7] The bishops originally consecrated by the Apostles had through these their jurisdiction from Christ Himself; the archbishops, who in earlier times appointed the bishops, had received their authority with the consent of the Pope, who had conferred upon them the pallium. The appointment of lawful bishops has always been made with the consent of the Pope, either expressed or understood; that is the appointment has always proceeded immediately or mediately from him.[8]

In the West the Pope was the only patriarch, and almost all the greater Churches were founded by him—for instance the German Church, the Hungarian, the Scandinavian, the English, and others—and amongst the patriarchal rights were included those of consecrating, or causing to be consecrated, the bishops, or at least the archbishops. The intermediate steps between the Pope and the bishops are to be regarded as so many copies of St. Peter's privileges,[9] and only from its connection with the Holy See could every mode of appointment not proceeding from the Holy See be lawfully possible. The ancient mode of proceeding did not neutralise, but rather presupposed, the divine right of the Pope; and was besides capable of alteration as soon as the needs of the Church required it, as we have seen in a special manner since the decline of the power of metropolitans.[10] To say that St. Peter was only *primus inter pares*, is to deny altogether the primacy.

[1] Bossuet, Defens. Decl. Cleri. Gall. P. iii. l. viii. c. xi. p. 95; c. xv. p. 105. Schenkl, Syntagma, § 37, not. 2, n. 3.

[2] Thomassin, P. i. l. i. c. liv. n. 5 seq.; c. lv. n. 1 seq.; P. ii. l. ii. c. i. seq.

[3] Döllinger, Lehrbuch der K. G. i. p. 183 seq. Bianchi, t. iii. l. i. c. ii. § 2, p. 1 seq.

[4] Thomassin, P. i. l. i. c. vii. n. 11 seq.; c. viii. n. 1 seq. Charlas, de Libert. Eccl. Gall. l. viii. c. iii. iv. Selvaggio, Antiqu. l. i. c. xvii. prop. 4, n. 23 seq. Phillips, Kirchenrecht, ii. § 69, p. 30 seq.

[5] Constant, Praef. in Ep. Rom. Pont. n. 22 seq. p. xviii. seq. Thomassin, l.c. c. xxx. seq.; l. ii. c. cvii. seq.

[6] Numerous proofs exist in the Briefs of Gregory the Great, for example: l. ii. Ep. 30, 31, 35; l. iii. Ep. 26; can. 23, c. xvi. q. 1; cap. vi. de Praesumpt. ii. 23.

[7] Martin. i. Ep. 5. Döllinger, l.c. pp. 188, 189. The Faculty of Cologne in 1618 expressed themselves against M. A. de Dominis, who (l. iii. c. xii. n. 58) saw in this an encroachment (Du Plessis, iii. ii. p. 223).

[8] Salmeron, l.c. p. 187 seq. For particulars vide Phillips, K. R. v. § 221 seq. p. 361 seq.

[9] Thomassin, P. i. l. i. c. ix. n. 12; c. xxvi. n. 5; l. ii. c. viii. n. 7; l. i. c. xiv. n. 4; P. ii. l. ii. c. lxi. n. 19.

[10] Phillips, l.c. p. 366 seq.

§ 8.

The appeal to the Councils of Constance and Basle, according to which the bishops assembled at a General Council derive their power immediately from God, proves nothing; for (1) the decision of the Council of Constance can only refer to the case of a great schism;[1] (2) these decrees have none of the authority of ecumenical definitions;[2] (3) moreover, it is not the same thing to say: 'The Council has authority immediately from God;' and to say, 'Individual bishops have their authority immediately from God.'[3] A true Ecumenical Council is a Council in union with the Pope. It derives its authority immediately from Christ. Without the Pope it is not an Ecumenical Council, and has no universal authority. It seems to follow from this again that the Pope alone derives his jurisdiction immediately from Christ; and that the bishops do not, because separated from the Pope they cannot compose a General Council.

We must remember to keep these two questions quite distinct: first, whether General Councils are convened and held by divine authority; and second, whether the authority of their

decrees and the power which they exercise are derived immediately from God.

To the first question theologians reply in the negative.[4] There is no divine command for General Councils. Many centuries have passed in which none were held, and if they were an essential part of the constitution ordained by Christ for the Church they would not have been left without care, their taking place would not be dependent upon external circumstances.[5] The constitution of the Church is not an aristocracy, but a monarchy; the Pope above the bishops is the head of a General Council, which is not conceivable without him.[6] But with the decrees of a General Council it is another matter: their authority comes from God; the Council only arrives at its decision with the assistance of the Holy Ghost; to it apply the words (Acts xv. 28), 'It hath seemed good to the Holy Ghost and to us.' But the authority of the Pope and of the Council is really one and the same.[7] The gift of infallibility is imparted to the Church by its visible Head. And the Church is not infallible, save in union with the Pope. The Council possesses infallibility only with and through the Pope; without him and unconnected with him it has none.[8]

[1] Turrecremata, Apol. in Conc. Flor. Relata et Sum. de Eccl. l. ii. c. xcix. c. Aeneas Sylv. Or. Viennae habita. Driedo, Dogm. l. iv. Schelstrate, de Sensu et Auctor. Decr. Conc. Const. Rom. 1686. Beidtel, p. 394.

[2] Petr. de Alliaco ap. Gerson, ii. 940. Cajetan, de Auct. Pont. et Conc. c. viii. ix Gregor. de Valentia, disp. i. q. i. punct. 7, § 44, p. 370, ad 7m. ed. Ingolst. 1595. Bennettis, p. i. t. i. p. 377. Ballerini, de Pot. Eccl. c. vii. p. 101. Phillips, K. R. i. § 31.

[3] Salmeron, l.c. p. 188, iv. 2.

[4] Salmeron, t. xii. tract. 77 (Andries, l.c. p. 284 seq.): 'Nos tamen illi sententiae magis assentimur, Concilium inventum esse Spiritus S., tacite suggestum S. Petro . . . . et ejus successoribus tamquam remedium certis temporibus opportunum ad terminandas vel extinguendas de fide vel sacramentis controversias vel ad abusus (disciplinae) exstirpandos . . . ita tamen ut haec suggestio non efficiat jus stricte divinum, sed jus tantum canonicum s. ecclesiasticum.'

[5] The greater number of theologians have declared against the necessity of General Councils maintained by Febronius and others (de Statu Eccl. t. i. c. vi. § 7).

[6] Greg. de Valentia, l.c. p. 360 seq. Salmeron, l.c. p. 282 seq.

[7] Canus, de loc. Theol. l. v. c. v. seq. 171: 'Ecclesiae vero auctoritatem eam nunc appello, quae synodorum etiam generalium ac summi Pontificis est. Haec enim est *una res prorus*, ut non differat multum inter Ecclesiae, Conciliorum Sedisque Apostolicae judicia, propterea quod connexa haec et colligata sunt, quemadmodum esse videmus humanum *corpus et caput*.' Cf. Gregory of Valentia, l.c. p. 363. Thus spoke, on the 1st March 1438, Bishop Peter of Digne before Eugenius IV.: 'Quamquam *una et eadem atque indivisa* sit potestas Papae ex Concilii generalis, tamen aliter et aliter. . . . Dixi quod aliter et aliter eadem potestas est in utroque quia in Ecclesia *fundamentaliter et in habitu* in Papa vero *actualiter* in exercitio' (Cecconi, Studii Storici sul Concilio di Firenze, vol. i. p. dlxviii.).

[8] Vide Schäzler, Die Päpstliche Unfehlbarkeit aus dem Wesen der Kirche bewiesen, Freib. 1870, pp. 91, 92. Cf. the whole of the tenth chapter, p. 89 seq.

§ 9.

Are, then, the bishops still really judges, and not merely advisers of the Pope? The bishops assembled at the Council are judges.[1] 1. Because with the Pope they represent the whole apostolate of the Church, which in the Council of the Apostles at Jerusalem pronounced a judicial judgment. 2. Councils attribute to themselves this office of judging; the Pope recognises it in the confirmation of decrees, which are signed by all the bishops.[2] 3. If the bishops were merely counsellors, there would be no reason to limit the right of speech only to bishops and to persons endowed with some part of the episcopal authority; it would more fitly belong to learned theologians and canonists. In so far as the Pope takes counsel of the bishops in preparing a definition may they be considered counsellors;[3] but they must not be regarded as mere counsellors.

[1] Vide Schäzler, Die Päpstliche Unfehlbarkeit, l.c. p. 103; the following also teach it: Turrecremata, Sum. l. iii. c. lxiii. lxiv.; Canus, l.c. q. 2 seq. 163; Bellarmin. de Conc. l. i. c. xviii.; Salmeron, tract. 79 (Andries, p. 283, note); Bened. XIV. de Syn. Dioec. l. xiii. c. ii. n. 3. The introduction of the Const. Vat. Dei Filius, of 24th April 1870, has the words: 'Sedentibus nobiscum et judicantibus universi orbis episcopis.'

[2] Upon the formula in which the bishops confirm the decrees of the Council vide Hefele, Conc. i. p. 18 seq.

[3] Greg. de Val. l.c. p. 367 ad 4: 'Quodsi quis propterea quod Pontifex hujusmodi Patrum opera atque judicio in determinanda fidei sententia utitur, quis putet Pontificis consiliaros eos appellari posse, non est de vocabulo magnopere laborandum.'

§ 10.

Neither the Council of Trent nor of the Vatican has decided the question whether episcopal jurisdiction is derived from Christ immediately or mediately through the Pope. The majority of the Fathers at Trent were of opinion that it was communicated immediately from the Pope. The Pope charged his legates, for the sake of peace, to leave this question untouched, since a decision on the subject was not then necessary against heretics.[1] The Vatican Council only teaches that the Pope has the supreme and immediate episcopal authority over all Churches and all the faithful, according to the teaching of the majority of theologians for centuries; that from the Holy See all power in the Church is transmitted to pastors and flocks.[2]

[1] Dr. Friedrich is quite unauthorised in saying (Tagebuch, Supplement, p. 437 seq.) that at Trent the judgment contained in the Creed of the Second Council of Lyons and the propositions of the Fifth Lateran Council were unrecognised, that the Council of Florence was repudiated (p. 199), and that 'the claims of the Curial system were not heard' (p. 244).

[2] Cf. Andries, op. cit. p. xxvi. seq.

Part III. The Power of the Pope is not the only Power; it is not arbitrary and absolute.

§ 1. The power of the Church not solely vested in the Pope. Council of Trent. § 2. The opponents of the Council repeatedly contradict themselves. § 3. Restriction upon the power of the Pope. § 4. No change made by the Vatican Council in this matter. § 5. Apprehensions founded upon mere suspicion. § 6. National Churches and bishops as vicars of the civil power.

§ 1.

It has been asserted that, in opposition to the Tridentine canon, according to which there exists a divinely appointed hierarchy of bishops, priests, and deacons, the decrees of the Vatican Council say that the Pope is the only divinely appointed bearer of any church authority. But first, the Vatican Council does not say this; on the contrary, it expressly states that the bishops are appointed by the Holy Spirit; and secondly, the Tridentine canon[1] speaks of the hierarchy of order,

but not of the power of jurisdiction, neither of the relation of the three grades to one another, nor of that of the bishops amongst themselves. Although the Pope possesses the fulness of power in the Church, he does not alone possess all power. Although it may be within his authority to limit the jurisdiction of a bishop, the bishop does not on this account become a mere deputy or vicar of the Pope. The bishops now, as ever, are called, and are, *Ordinaries*.[2] They possess an ordinary power, which they exercise by virtue of their office, and which they can impart to others. The Council of Trent makes a distinction between the ordinary power of bishops (potestas ordinaria) and the special power delegated to them by the Pope. As long as the episcopal office is an essential element in the organism of the Church, which it will be till the end of the world, so long will bishops be no mere Papal vicars.[3]

[1] Sess. xxiii. can. 6, de Ord.

[2] S. Thom. Opusc. de Perfectione Vitae Spiritualis: 'Notandum, quod ordinarium *ab ordine* dicitur; unde ordinarium videtur importare id, quod secundum communem ordinem in republica fit semper; propter quod illud, quod competit diversis gradibus et statibus in republica ordinatis *ordinarium* dicitur. Unde potestates competentes in hujusmodi institutis, in ecclesia sc. patriarchali, archiepiscopali, episcopali, et parochiali, dicuntur *ordinarii*, et illi, qui simpliciter in talibus statibus et gradibus statuuntur, ut regant populum per se vel per alium secundum gradum et statum, in quibus statuuntur, dicuntur ordinarii. Potestas autem *commissarii* proprie loquendo videtur dici quando alicui ab aliquo committitur eadem potestas quae est sua ordinaria, secundum quam vice ejus aliquid agat. Unde *collatio talis potestatis non dicit novum gradum potestatis*, sed dicit commissionem ejusdem potestatis ab instituto in ipsa potestate, ita quod potestas commissionem ejusdem potestatis ab instituto in ipsa potestate ita quod potestas commissaria est commissa ab instituto in gradu potestatis simpliciter. Et ita patet, quod praelati isti a Papa positi *non sunt commissarii sed vere ordinarii*.'

[3] Vide Schäzler, Die Päpstliche Unfehlbarkeit aus dem Wesem der Kirche bewiesen, Freib. 1870, p. 45.

§ 2.

The opponents of the Council are on this point full of contradictions. In 1868 Schulte wrote, 'Scarcely any trace remains of the strife between so-called episcopalism and papalism.' Yet now he says that, by the Vatican definition of the 18th July

1870, the bishops have been degraded into Papal deputies and diocesan vicars;[1] and that this degradation of the bishops is contained in their oath to the Pope, which is now, he says, recognised as a real vassal's oath.[2] But the form of the oath now standing in the Pontificale is more than two hundred years old;[3] its matter existed in the formulas of Gregory VII.[4] Schulte thinks 'that many bishops may not have been acquainted with the consecration oath, anyhow may not have properly considered it when it was read over to them, many may not have understood it.'[5] But this would have very little importance as far as regards the question of right. It is alleged that bishops are degraded by holding as distinctions the titles conferred upon them by the Pope of 'assistant at the Papal throne, domestic prelate,' &c. But would it be considered also a degradation if a bishop were to become knight, companion, or grand cross of this or that civil order, privy councillor, &c.? Bishops in using in their title the words 'by the grace of God and favour of the See Apostolic,' words of frequent use in the thirteenth century,[6] clearly express that they are indebted to the See of Rome for their office.[7] The opponents of the Vatican Council pretend that they desire the Church to be 'such as she was before the 18th July 1870;' and in reality they desire her to be such as according to the opinion of Febronius she was in the first six centuries, with a complete abstraction of mediæval developments, and a continual movement in favour of a national Church. *Janus*, the prototype of all New-Protestant literature, proves this, as well as the newspaper articles of the same party, and the publications of Friedrich and Schulte. The latter assumes that since the time of Gregory VII. the Church has undergone a complete change. 'The episcopal authority has been annihilated, crushed by Papal omnipotence.'[8] And yet this change is said to have begun on the 18th July 1870! And those who now assert this could be good Catholics until that 'fatal July day'! But if the life of the Church during long centuries was not according to her true constitution; if she found herself again at Constance and at Basle, having, therefore, lost herself both before and since,[9] she could not be the true Church.[10]

She would long since have ceased to be the Bride of Christ, and would have been without divine assistance; the greater number of bishops and theologians would have erred in faith, and the separation of Protestants from Catholics would have been a lawful act. Wicliffe, like the opponents of our day, called the Pope 'Antichrist';[11] but the whole Church has branded him and all his followers. Marcus Antonius de Dominis urged that the spiritual power of the Pope was a late development;[12] but all Catholics have judged him to be heretical.

[1] Schulte, ii. p. 75.

[2] Schulte, ii. p. 45.

[3] Cf. Phillips, Kirchenrecht, ii. § 81, p. 193 seq.

[4] C. iv. de Jurejur. ii. 24, Mansi, Conc. xx. 526.

[5] Schulte, ii. 52, 53.

[6] Zaccaria, op. cit. t. ii. dissert. 12.

[7] Upon the words of Gregory I. l. i. Ep. 38, ad Petr. Subd., in which he says to the bishops of Sicily, 'in B. Petri Ap. principis natalem (Romam) conveniant, ut ei, *ex cujus largitate pastores sunt*, gratiarum actiones solvant,' the remark: 'Idem profitentur antistites, dum se suis in epistolis et commonitoriis praefantur Apostolicae Sedis gratia episcopos. Sedem enim Apostolicam pro S. Petro usurpari et vice versa norunt eruditi omnes.'

[8] Schulte, ii. p. 68.

[9] Friedrich, p. 141. This is just the language used by Edmund Richer (Du Plessis, t. ii. P. ii. p. 305) of the 'veritas justi regiminis Ecclesiae jure postliminii in Constantiensi et Basileensi Conciliis restituti.'

[10] In 1644 the Sorbonne condemned several propositions of Brachet de la Milletière, 'in quantum damnant disciplinam et consuetudinem ecclesiasticam ab omnibus cath. communionis ecclesiis receptam, quantumcumque diuturnam tamquam abusivam et institutioni Christi ac evangelicae doctrinae contrariam,' as 'propositiones temerarius, Ecclesiae injuriosis et haereticas' (Du Plessis, t. iii. P. i. p. 20). The censure passed by the Faculty of Cologne upon the apostate De Dominis is also to the point (ib. P. ii. p. 192 seq.). Upon the first proposition, 'Mulier fortissima Ecclesia, miserandum in modum delituit,' it is said: 'Propositio haeretica, visibilitati Ecclesiae, quae nullo unquam tempore delituit, repugnans.' The further one, 'Ecclesia sub Romano Pontifice non est amplius Ecclesia sed respublica quaedam humana sub Papae Monarchia tota temporali; vinea est ad solum Noe inebriendum,' was called 'Propositio haeretica et maledica.' The Sorbonne said upon the same proposition (ib. t. ii. P. ii. p. 105): 'Haec prop.'1 parte est haeretica; dicit enim veram Ecclesiam, cum non alia sit quam quae Romano Pontifici paret, jam desiisse; pro reliqua vero parte est calumniosa et scandalosa.'

[11] Du Plessis, t. i. P. ii. p. 40.

[11] De Dominis, de Rep. Chr. l. iv. c. vi. n. 7; c. vii. n. 38, 53; c. ix. n. 19; c. x. n. 53; also the Censura Coloniensis (Du Plessis, t. iii. p. ii. pp. 225, 226).

§ 3.

Like these, Döllinger, Schulte, and their followers pretend that the supreme power of the Pope is omnipotent, arbitrary, and absolute.

In the Middle Ages, John of Salisbury, a supporter of the Papacy and friend of Adrian IV., said: 'That the Pope was truly the "servant of the servants," and encompassed by cares and toil;[1] that the very elevation of his dignity restricted his actions;[2] and that he had no right to overstep the law of God.'[3] This last has been frequently expressed by Popes Alexander III. and Innocent III.,[4] by many of their successors in various utterances,[5] and is the common doctrine of theologians and canonists.[6] As Walter[7] the canonist shows, the Pope is, above all, circumscribed by the consciousness of the necessity of making a righteous and beneficent use of the duties attached to his privileges, and that the Popes have always listened to the most plain-spoken admonitions of learned and pious men.[8] The Pope is also circumscribed by the spirit and practice of the Church, by the respect due to General Councils[9] and to ancient statutes and customs,[10] by the rights of bishops,[11] by his relation with civil powers,[12] by the traditional mild tone of government[13] indicated by the aim of the institution of the primacy 'to feed,' finally by the respect indispensable in a spiritual power towards the spirit and mind of nations.[14] Let us hear Dr. Döllinger: 'Outside the Catholic Church it has become almost customary to designate the Papal power as a boundless and absolute power which recognises no law superior to itself, and we hear much of Papal omnipotence, or at least of a never-abandoned claim to universal dominion. All these ideas and charges are untrue and unjust. From one point of view, the Papal power is the most restricted power imaginable; for its first duty, as Popes have repeated times without number, is to watch over the laws and ordinances of the Church, and guard them from infringement. The ordinances of the Church have been long established

and its legislation has been carried into the most minute particulars. The Papal See is also especially bound to be governed by the most careful consideration of the decrees of the Church. Only upon these conditions can the Pope reckon upon the obedience of Churches, and the confidence and respect of the faithful. Hence any one with a knowledge of church legislation could foretell in most cases with certainty how a Papal decision would turn. Catholics hold that a considerable portion of the ordinances of the Church rest upon divine command; are therefore not to be touched by Papal or any other authority. No Pope can dispense what God has ordained. This is acknowledged universally. What can restrain the Pope? de Maistre inquires. *Everything*: canons, laws, national usages, sovereigns, courts, parliaments, prescription, remonstrances, treaties, duty, fear, wisdom, and above all public opinion, the queen of the world.'[15]

[1] John. Saresb. Polycr. l. viii. c. xxiii. p. 811: 'Qui Romanus Pontifex est eumdem pro conditione Ecclesiae, quae nunc est esse servum servorum, necesse est. Non equidem nuncupative ad gloriam, ut quidem opinantur sed substantive utpote qui servis Dei serviet vel invitus. Adeo quidem ut nisi servierit aut expontificem aut exromanum esse necesse sit. Quis ergo eum servum servorum esse ambigit? Dominum Hadrianum .... hujus rei testem invoco, quia Romano Pontifice nemo miserabilior est, conditione ejus nulla miserior. Et licet nihil aliud laedat, necesse est ut citissime vel solo labore deficiat.'

[2] Ib. p. 813: 'Si in summa potentia minima licentia est, profecto qui legibus praeest, nulli subjicitur, sed ab illicitis arctius coarctatur. Ergo et Romano Pontifici minimum, eo ipso quod plurimum, licet.'

[3] Id. 1167, Ep. 198, ad Alex. III. Pap. p. 218: 'Fateor, et verum est, omnia Romano licere Pontifici, sed ea dumtaxat, quae *de jure divino* ecclesiasticae sunt concessa potestati. Liceat ei nova jura condere, vetera abrogare, dum tamen illa, quae a Dei Verbo in Evangelio vel Lege perpetuam causam habent, mutare non possit. Ausim dicere, quod nec Petrus ipse perseverantem in scelere quemquam et voluntate peccandi posset absolvere, nec claves accepit, quibus regni januam posset *impoenitentibus* aperire.'

[4] Alexander III. c. iv. Super eo, v. 19, de Usuris. Innoc. III. c. Literas 13, de Restitut. Spoliat. ii. 13, ad Bituric. l. xv. Ep. 106, p. 617, Philippo Regi Francorum: 'Cum contra .... veritatis sententiam nostra non possit auctoritas dispensare.' Huber, page 18, cites a passage from l. i. Ep. 127, p. 116, ad Capitul. Camer., according to which, he says, Innocent III. concluded that from the plenitude of his power the Pope was independent of right. The passage is simple enough: 'Licet autem in-

tentionis nostrae non sit, investituras de vacaturis factas contra canonum instituta ratas habere qui secundum plenitudinem potestatis de jure possumus *supra jus* [Coll. iii. has *super his*] dispensare,' &c. It treats of the appointment to a canonical office, and is not a general proposition. 'Super his' is the best reading; but even if 'supra jus' be preferred, there is no question of 'jus divinum,' which it would have been necessary to have especially named. A dispensation also is a concessio ultra (supra) or contra jus.

[5] Bened. XIV. de Syn. Dioc. l. xiii. c. xxi. n. 7, says of the dispensationes in radice matrimonii, that they were granted 'tunc solum, cum impedimentum, propter quod matrimonium irritum fuit, nequaquam ortum habuit a jure divino, vel naturali, sed a lege dumtaxat ecclesiastica, quam positivam vocant et cui summus Pontifex derogare potest.' Also the decree of the same, of the 13th Sept. 1755: 'Quum super matrimonio' (Conc. Trid. ed. Richter, p. 274).

[6] Barbosa, de Offic. et Potest. Episcopi, P. i. c. i. n. 28. Reiffenstuel, Jus Can. l. i. tit. 2, § 18, n. 455. Schmalzgrueber, l. i. tit. 2, § 8, n. 57. Phillips, K. R. v. § 212, p. 180.

[7] Walter, K. R. § 126, pp. 241-243, xi. ed.

[8] Innocent IV. caused a very candid memorial from Bishop Robert of Lincoln on the faults of the Papal Court to be read in presence of the cardinals, and gave the author all proofs of his esteem (Brown, Fasciculi. rer. Expet. ii. p. 250; Rob. Ep. 113, 114; Lingard, Eng. Hist. iii. p. 207, n. 1, Germ. Trans.). Hadrian IV. also gave willing ear to the candid expressions of John of Salisbury (Polycr. l. vi. c. xxiv. pp. 623-625). Also Paschal II. A.D. 1111, and Pius VII. A.D. 1813, listened meekly to the reproaches made them. The Popes in so doing followed the example of St. Peter, who suffered St. Paul's reproofs with meekness and charity: 'Erat objurgatore suo ipse qui objurgebatur mirabilior et ad imitandum difficilior.' Aug. in Gal. c. ii. Cf. Ep. 89, ad Hieron. Cypr. Ep. 71, ed. Baluz. Maucler, de Monarchia Divina, pp. 251, 461. Phillips, K. R. i. § 30, p. 244. Petrus Venerabilis wrote to Innocent II. (l. ii. Ep. 28, p. 246): 'Cum jure majestas apostolica omnibus dominetur; soli tantum rationi subjici gloriatur.'

[9] Of course those meant are such as have been recognised as general, and have been confirmed by the Holy See, as is shown by the quoted passage of the Decretal, c. vii. xiv. 1; C. xxv. q. 1, c. xvii.; C. xxv. q. 2.

[10] Bellarmin. de Rom. Pont. c. vi. vii. C. xxv. q. 1; c. xxi. 19.; C. ead. q. 2.

[11] Bellarmin. de Rom. Pont. l. i. c. iii. says bishops are not vicarii Pontificis maximi. Also Petrus Ballerini, l.c. n. 9, p. 171.

[12] It is clear that this has become much more difficult now since there no longer exists any Catholic State, and the Church has become subjected to jura majestatis in sacra that were unknown formerly. None the less it is nowadays more true even than formerly, quod eminentiae regalis obtentu quandoque rigor temperatur ecclesiasticus et canonum severitas mansuescit. Petr. Bles. Ep. 164, p. 459.

[13] Greg. M. l. viii. Ep. 30, serves as a special example. Vide also Maucler, l.c. p. 248 seq.

[14] Cf. Phillips, l.c. p. 245: 'As a ruler acts wisely in examining the means which are to serve him in accomplishing the objects he aims at in his line of government, so the Pope must also examine and weigh the means furnished him by the epoch in which he lives for the increase and strengthening of the kingdom of Christ upon earth. In this sense we can say with truth that it is the duty of the Pope to consider the spirit of the age.' Innocent III. writes as follows to the bishops of Sardinia, lib. vi. Ep. 16 (Migne, ccxv. p. 23): 'Sic Apostolica Sedes auctoritatem propriam moderatur, ut *plus quod expedit quam quod licet* attendens potentiam suam publicae utilitati conformet.'

[15] Kirche und Kirchen, pp. 38, 39. At p. 41 are cited the utterances of Card. Gonsalvi and of Archbishop Kenrick. Cf. the same author, Ueber gemischte Ehen, p. 65.

§ 4.

Was all this changed at one blow on the 18th July 1870? Surely not, or it had been the greatest wonder the world's history had ever seen, especially as rather more than eight weeks later the Pope was deprived by an unparalleled breach of faith of all the earthly support of his power. The defenceless Pope has still to face sovereigns, courts, parliaments, and national usages. Remonstrances and treaties have not lost their significance. The influence of duty, fear, and wisdom is still felt. Public opinion, far from having lost its force, has in many places gained the strength of insanity. The canons and laws of the Church are still in full vigour, and she is bound as of old by agreements and by legislation. Has the Pope acquired the right to revoke or change the commands of God? Can he define a doctrine that is not part of revelation? Can he abolish ancient dogmatic definitions?[1] A definition once made remains unchanged and unchangeable for all time. Has a change taken place in the Pope? Has Pius IX. any powers not held by Pius VII.? All Popes have presupposed the infallibility of their doctrinal definitions, and have ascribed to the Holy See the possession of the plenitude of the power of the Church, recognising at the same time the limits of their authority, and distinguishing between their personal unworthiness and the dignity of their office.[2] They know full well that the Church's true Head is Christ, whose vicars they are, and to whom they will shortly have to render a strict account of the manner in

which they have performed their trust. It is the uttermost perversion of the doctrine of the Church to speak of the 'omnipotence' ascribed to the Pope by the Vatican decrees, and to say 'that the Pope might in one day abolish all the established dogmas of the Church, and alter all its discipline; that there is no longer any firm dogma.'[3]

[1] The Council speaks clearly, Vat. Const. c. iv.: 'Neque enim Petri successoribus Spiritus S. promissus est, ut eo revelante novam doctrinam patefacerent, sed ut eo assistente traditam per Apostolos revelationem seu fidei depositum sancte custodirent et fideliter exponerent.'

[2] Vide Innocent III. l. i. Ep. 85, ad Archiep. Mediol. p. 74: 'Licet et peccatores, simus et nati de peccatoribus, illius tamen et vices agimus et locum tenemus, qui peccatum non fecit,' &c. Cf. Ep. 88, p. 75.

[3] Schulte, ii. p. 75 seq.

§ 5.

At the bottom of all the extravagant assertions which we hear nowadays—for example that the Vatican Council has made 'the boundless absolutism of the Papacy into an article of faith'—lies in point of fact (apart from perversions of the dogma) nothing more or less than a dread lest Papal Infallibility and the supremacy of jurisdiction be misused to overthrow the existing ordinances of Church and State. Such a dread shows an entire absence of Catholic faith. It was of faith before the 18th July 1870, that Christ had conferred upon St. Peter the supremacy of jurisdiction for the well-being of the Church. The Council of Florence had defined this doctrine, and it had been taught universally. It was also of faith, upon the ground of the Catholic interpretation of Holy Scripture, that the whole Church would not be suffered to fall into error. Faith in these doctrines precludes the idea that the Pope, as supreme guardian of revelation, could ever commit the Church to a doctrinal error, or that civil authority could suffer from a power that has always taught, and will always and does always teach, that civil authority is from God, and that obedience towards it is a duty. No injury can ever be done to the faith by the Holy See, to which every age of Christianity has looked to confirm its faith. Bossuet says that its energy at the time of Leo the Great (in the fifth

century) appeared to him so wonderful, that he thought in succeeding ages it must have lessened rather than increased.[1]

The power of the Church has never been an absolute power, for she has always possessed in the Gospels and in tradition a fixed code of laws. The necessity of obeying these laws has given her a constitution, and the divine assistance is her sure guide.[2] Groundless, therefore, and unnecessary is any fear lest the Church should injure the State, and fears with regard to the future position of bishops are equally untenable. Even humanly considered, and setting aside the divine ordinances in the institution of the episcopate, the autonomy of several hundred bishops without a head would be likely to be the cause of far graver abuses than a strong central power.

[1] Corollar. Defens. § 10, t. ii. p. 318: 'Haec habens et exercens Apostolica Sedes tanta antiquitus auctoritate viguit, ut (fidens dixerim) imminuta magis quam aucta esse videatur.'

[2] Liberatore, Lo Stato e la Chiesa, c. ii. a. 3, p. 160.

§ 6.

The supposed design of making the bishops vicars of the Pope leads us to consider another design of an opposite character, that of making them vicars of the civil power.[1] J. N. Nuytz aimed at this when he wrote that the decision of a National Council admits of no further discussion, and the civil power can settle an affair as decided by such National Council (Syllabus, Prop. 36). A French pamphleteer and an Italian Liberal, who thought that national Churches could be established after being withdrawn and separated from the authority of the Roman Pontiff[2] (Prop. 37), had the same object in view. It was also intended by J. N. Nuytz and others, who declared that bishops were possessed of a double power—one purely ecclesiastical, limited to their authority to ordain and teach; the other, referring to jurisdiction and temporal matters in the widest sense of the words, and granted expressly or tacitly by the civil power, which could revoke it at pleasure (Prop. 25).[3] The same end is indicated by the assertion that the State possesses as inherent in itself the right of presenting bishops, and may require of them

that they take possession of their dioceses in virtue of their nomination before having received the confirmation of the Holy See[4] (Prop. 50); further, that the lay government has the right of deposing bishops from their pastoral functions, and is not bound to apply to the Pope nor obey him in those things that relate to bishops' sees and the institution of bishops[5] (Prop. 51). In Germany bishops have already before this been regarded as 'anointers' appointed by the State, and now again the former idea of a national Church has found favour in many quarters.[6] It has been hoped, by means of State authority and penal laws against Catholics, to found at last a State Church. But the faith of the bishops, priests, and people is unshaken, and although much assistance has been given and material power has lent its aid, the high-sounding preparations for a national Church have served only to found a new and small sect, which has been joined by a few apostate priests who have sought to win over bishops and kings by exaggerating the episcopal and royal power. The national or imperial Church would convert the bishops into vicars of the State. The Universal Church alone maintains them in their true position.

[1] In old times also measures were taken to bring this about. Vide Hugo Grotius, Commentar. Posthumus de Imperio Summarum Potestatum circa Sacra, c. ii. n. 2: 'Ecclesiarum pastores, qua tales sunt, i.e. quatenus munere funguntur docendi et declarandi verbum Dei auditoribus suis s. fidelibus, non esse summarum potestatum vicarios.' He asserts, nevertheless, that they: 'Quatenus praeter pastorale munus aliquid imperii aut jurisdictionis accipiunt, ejus accessionis ratione verissime dici *summarum potestatum vicarios aut delegatos*.' Vide on this subject the work, De Finibus utriusque Potestatis, Ecclesiasticae et Laicae, Comment. Auctore D. . . . . presbytero monacho Ord. S. Bened. e Congreg. Casin. et jurisprud. eccl. prof. Primum Lugani, dein Ratisbonae editus impensa J. M. Englerth, 1781, iv. cap. i. p. 4 seq.

[2] Alloc. Multis gravibusque, 17 Dec. 1860, and Jam dudum cernimus, 18 March 1861.

[3] Lit. Ad Apostolicae Sedis, Syll. Prop. 25.

[4] Alloc. on South America, 15 Dec. 1856, Nunquam fore, Syll. Prop. 50. Those who being elected or nominated enter upon their office before their appointment has been confirmed are, according to the law of the Church, 'intrusi,' even if they act as procurators or stewards. Greg. X. in Conc. Lugd. ii. (c. v. Avaritiae, i. 6, de Elect. in 6). Bonifac. VIII. Const. Ad Reformandum, 5 Aug. 1485. Julius II. Const. Romani Pontificis, 28 Jul. 1505. Julius III. Const. Sanctissimus; cf. Reiffenstuel in

l. i. Decret. tit. 6, § 2, n. 40 seq. Clem. XI. Const. In suprema, 24 Aug. 1709; Ubi nobis, 7 Mart. 1710. Pius VII. Briefs to Cardinal Maury, 5 Nov. and to Mgr. Corboli, 2 Dec. 1810.

[5] Alloc. Lit. ap. Multiplices inter, 10 June 1851, against Vigil. Alloc. Acerbissimum, 27 Sept. 1852, on New Granada.

[6] Especially with the Augsburg Allgemeine Zeitung. *e.g.* Supplement, 31 Aug. 1870. It saw in Prof. Leopold Schmidt, who died out of the Church, and who was once a candidate for the bishopric of Mayence, a forerunner of the new national Church.

ESSAY V.

THE SYLLABUS AND MODERN STATES.

The Syllabus published with the Encyclical of December 8, 1864, is a collection of the principal errors of our day. It is frequently attacked as containing new doctrine, laying down infallible rules, and declaring war to the death with all modern States and modern constitutions. Yet, on impartial examination, any one acquainted with ecclesiastical matters could see plainly that it taught nothing new. The propositions are all in effect contained in the Encyclical 'Mirari vos'[1] of Gregory XVI., August 15, 1832, which at the time no Catholic ventured to attack, but which some now call 'ill-famed;' in the first Encyclical of Pius IX., dated November 9, 1846;[2] and in later Allocutions and apostolic writings.[3] Neither is it correct to say that the Encyclical of December 8, 1864, only refers generally to the condemnation of several pernicious opinions, whilst the Syllabus appended to it is the first decidedly to denounce them. The Encyclical contains many separate condemned propositions, and the two mutually complete each other. We will proceed to consider: 1. The general and legal aspect (the formal significance) of the Syllabus; 2. Its separate propositions.

[1] Bull. Rom. Cont. t. xix. pp. 126-132, Const. 167.

[2] Acta Pii IX. vol. i. Romae, 1854, pp. 4-24.

[3] They are collected in a volume, published by Pustel at Ratisbon in 1865: Ss. D.N. Pii P.P. IX. Epistola Encyclica, data die VIII. Dec. 1864; accedit Appendix antiq. mora et novissima documenta continens, &c.

PART I. FORMAL SIGNIFICANCE OF THE ENCYCLICAL OF 1864 AND OF THE SYLLABUS.

§ 1. Difference between the propositions of the Syllabus and ecclesiastical censures. § 2. Has it dogmatic force? § 3. Examples.

§ 1.

Our opponents are quite wrong in supposing that all the propositions contained in the Syllabus are condemned as false and heretical, and that therefore *all* the propositions contradictory to these are so many articles of faith. On reading the whole eighty propositions, very little impartiality would suffice to discover great differences between them. The Pope has *nowhere* declared all these eighty propositions to be heretical, and only the *contradictory* of an heretical proposition can be considered as dogma.[1] Each separate proposition is not described as heretical nor qualified in any other way; they are only condemned collectively as *false and perverse opinions.*

Propositions may be distinguished as heretical, erroneous, rash, impious, scandalous, dangerous, &c.[2] In ecclesiastical judgments either each individual proposition is qualified, as, for instance, in the Bull of Pius VI., 'Auctorem fidei,'[3] August 28, 1794, or a set of propositions are rejected as a whole, without a determinate theological censure being applied to each separate proposition, as in the Bull 'Unigenitus' of Clement XI., September 8, 1713.[4] Now and then only a minimum of the deserved censure will be expressed in the wording; for example, Alexander VII. condemned many tenets in 1665 and 1666 as 'at least scandalous.'[5] A Pope or a Council can even deliver a dogmatic judgment in different ways, either simply rejecting what is evil, or also determining the degree of the evil, which may be very different, for this reason amongst others, that an error may be either directly or only indirectly opposed to faith.[6]

[1] Cf. Opinion of the Theological Faculty of Würzburg of 7 July 1869, Fr. i. § 1, p. 2.

[2] Melchior Canus, de Locis Theologicis, l. xii. c. x. Gauthier, Prodrom. ad Theol. Dogm. Schol. in Thes. Theol. ed Zaccaria, t. i. 53. Denzinger, Enchirid. definit. et symbol. ed. iv. Wirceb. 1865, Praef. p. ix. Reinerding, Theol. Fundam. t. i. p. 235, n. 406. Kilber, Theol. Wirceb. t. i. disp. 3, c. ult. Append. ii. n. 252, p. 682 seq.

[3] Denzinger, l.c. pp. 388-422.

[4] Denzinger, l.c. pp. 351-361.

[5] Bullar. Rom. ed. Lux. t. vi. Append. pp. 1, 2. Denzinger, l.c.

pp. 317-322. Cf. Zallwein, Princip. Jur. Eccl. t. i. q. 4, c. ii. 652, § 6. Phillips, Lehrbuch des Kirchenrecht, § 246, p. 802, i. edit. Aichner, Compend. Jur. Eccles. § 144, p. 447. Specially appropriate to this is Dominicus Viva Damnatae Theses ab Alex. VII., Innoc. XI. et Alex. VIII. ad theologicam trutinam revocatae, Patavii, 1732.

[6] S. Thom. Lect. iv. in 1 Cor. c. xi. Opp. xvi. p. 74, ed. Rom. 1570: 'Pertinet aliquid ad doctrinam fidei dupliciter: uno modo *directe*, sicuti articuli fidei, qui per se credendi proponuntur .... quaedam vero *indirecte* .... in quantum ex negatione eorum sequitur aliquid contrarium fidei, sicut si negatur Isaac fuisse filium Abrahae, sequitur aliquid contrarium fidei, sc. S. Scripturam continere aliquid falsi.'

§ 2.

The propositions which are contained in the Syllabus are, then, condemned in the mass (in globo); nothing further is determined than that these propositions must not be held or maintained. The faithful have to submit to the decision of the Church as it is given to them. It has not been decided that the propositions as a body are heretical, but only that they must be rejected; not that they all militate directly against faith and morals, but only that collectively they endanger them. None of the propositions cited in the Syllabus are entirely free from theological censure; each one is censured in one way or another, but certainly not each one in the same way.[1] The Encyclical of December 8, 1864, and the Syllabus appended to it lay down no rules of faith in a strict sense,[2] but they are certainly dogmatic decisions as well as the above-mentioned Bull of Clement XI. Otherwise the decision of the Council of Constance against the doctrines of Wicliffe and Huss[3] would not be dogmatic; neither the Bull of Leo X. against Luther,[4] nor that of Pius V. against Baius,[5] or that of Innocent XI. against Michael Molinos,[6] or of Innocent XII. against the twenty-three propositions from Fénélon's book (*Maxims of the Saints*).[7] All these decrees and constitutions condemn propositions in a mass (in globo), and yet to Catholics they are all dogmatic. Martin V., after the publication of the Bull in which he approved of the Council of Constance, desired that any one suspected of heresy should be asked, among other things, whether he believed in the truth of the decision of the holy Council of

Constance concerning the forty-five propositions of Wicliffe and the thirty propositions of Huss, by which these sets of forty-five and thirty propositions were declared not to be Catholic, some of them notoriously heretical, some false, some insolent and seditious, and some offensive to pious ears.[8]

This condemnation of propositions in globo is rightly and wisely done,[9] in order to prevent any of them being defended or held, although they do not all deserve the same censure.[10] A considerate doctor wisely forbids his patient to partake of the dishes spread out on a richly-supplied table, because all are hurtful to him; although he does not pronounce in what way each one would hurt him, and which would hurt more and which less. Some consider that these condemnations in a mass are a novelty in Church discipline. Even were it so, this would be no reason for Catholics not to respect them. But in fact they are no novelty. When the writings of Arius (especially his *Thalia*) were condemned by the Council of Nice, everything therein contained was not considered in the same light. When the works of Origen were condemned by Theophilus, Epiphanius, and Pope Anastasius, everything that Origen had written was not equally disapproved. At the condemnation of the Three Chapters, in the fifth Ecumenical Council, the whole contents of the letter of Ibas to Maris the Persian, the writings of Theodore of Mopsuestia, and those of Theodoret against Cyril were not considered deserving, in all their parts, of the same censure. In the Sixth Council the letters of Honorius to Sergius and of Pyrrhus of Constantinople to Pope John IV. were condemned. Who can believe that *everything* found in these could be *proscribed* in equal measure? If that had been the case, articles of faith, theological and perfectly correct propositions, must have been likewise condemned.

The distinction between dogmatic judgments which enjoin the acceptance of certain propositions and give a precise rule of faith and those which are only dogmatic judgments in *a wider sense*, inasmuch as they reject certain propositions in general, solves the apparent contradiction among theologians, some considering the Syllabus among the Papal dogmatic deci-

sions in the sense of the Vatican Council, others disputing it. When the Church censures a doctrine without stating the kind of censure, we are bound to consider it worthy of censure, but not necessarily of the highest degree of censure.[11]

[1] Kilber, Theol. Wirceb. t. iv. tract. 3, disp. 4, c. ii. a. 7, n. 244, p. 349: 'Bullae Unigenitus non deest character definitionis dogmaticae ex eo, quod contra Quesnelli propositiones latae fuerint censurae, ut aiunt, *in globo*. Ratio est, quia hic defectus nec est juris nec facti. *Non est defectus juris*: quia per ejusmodi censuram in globo imprimis propositiones omnes constat rejiciendas, deinde intelligitur, nullam esse censuram, quae alicui saltem propositioni non conveniat. Unde postremo, quamvis vi Bullae et condemnationis distingui nequeat, quaenam nota cuilibet ex damnatis propp. debeatur, tamen id Theologorum studio et industria facile cognosci potest, et nullatenus ad rationem dogmatici judicii necesse est, ut applicationem qualificationum ulterius determinet .... atque ex eo (quoque constat), quod non summa claritas et individualis quasi determinatio in condemnationibus requiratur. *Nec est defectus facti*, quia consuetudinis ecclesiasticae est similis condemnatio, ut patet ex decretis.' Conc. Constant. adv. Wicleffum et Hussum, ex Bulla Leonis X. adv. Lutherum, ex Constit. Pii V., Gregorii XIII. et Urbani VIII. adv. Bajum et Jansenium.

[2] Kilber, l.c. n. 245, pp. 350, 351: 'Equidem ex his conficitur, Bullam Unigenitus non esse *fidei regulam in sensu stricto;* est tamen *judicium dogmaticum* quod servit *ad dirigendos fideles in ordine fidei*, prout Cardinales archiepiscopi et episcopi Parisiis a. 1728 congregati pronunciarunt de judiciis Ecclesiae qualificationes tantum *respectivas* continentibus.' The Bull and also the Popes describe as dogmaticum S. Sedis et universalis Ecclesiae decretum S. judicium: for example, Clement XIII. in the Brief of Jan. 23, 1765, to the Bishop of Lüttich; also the Sorbonne, in the Decree of Dec. 15, 1729 (Du Plessis, t. iii. P. i. p. 184).

[3] Denzinger, Enchirid. ed. iv. pp. 186-193, n. 477-550.

[4] Ib. p. 220 seq. n. 220.

[5] Ib. p. 302 seq. n. 881 seq.

[6] Ib. p. 333 seq. n. 1088 seq.

[7] Ib. p. 348 seq. n. 1193 seq.

[8] Art. 11 ex Const. Inter cunctas, l.c. p. 194, n. 555.

[9] Cf. Bossuet, Second Ecrit sur le Livre de Mgr. Fénélon, n. 2.

[10] Pallavic. Hist. Conc. Trid. l. i. c. xxi., and Tournely, Praelect. Theol. de Censuris, art. 1, t. iii., where many testimonies support this opinion. Eck observed at the disputation at Leipzig, 1519, with regard to the propositions of Huss condemned at Constance: 'Quoniam aliquam certe censuram merentur singulae et ex iis reliquis censuris (praeter notam haeresis) per disjunctionem a concilio inustis, nimirum vel esse erroneas vel scandalosas vel temerarias et alia hujusmodi' (Pallav. l.c. c. xvi. n. 9). Vide particularly Car. Du Plessis d'Argentré, Coll. de Nov. Erroribus, Paris, 1724, t. i. P. ii. p. 53 seq.

[11] The letter of Cardinal Antonelli which accompanied the Syllabus

only speaks of errores ac perniciosas doctrinas, quae ab ipso (Summo Pontifice) reprobatae ac proscriptae sunt.

§ 3.

It follows that we must not regard the contradictory of each separate proposition condemned by the Syllabus as a dogma of the Church. A dangerous or offensive proposition may be as dangerous or offensive, whether the predicate be denied or affirmed. A clear though coarse example will make this plain. When Fr. Abraham a Santa Clara said in a sermon, 'Ladies who bare their necks *are not worthy* to be spat upon,' he was called upon to retract, because it would apply to some of the persons at court. He is said to have replied by the contradictory proposition: 'They *are worthy* to be spat upon.' Whether the story be true or false, it is a good illustration of our meaning.

The proposition of Quesnell was dangerous and offensive when, treating excommunication as unjust and disobeying the teaching of the Church, he imagined it his duty to propagate his heresy (prop. 91-93), and accused the Church of ignorance and tyranny in matters of faith (prop. 94-95). But it is impossible to derive from his condemnation the doctrine, that fear of unjust excommunication must sometimes (or always) deter us from the fulfilment of our duty. The twenty-fourth proposition of the Syllabus contains two negative errors: 1. The Church has no right of coercion; 2. she has neither direct nor indirect temporal power. In rejecting this second proposition the doctrine cannot be deduced that the Church has a direct and also an indirect temporal power, but only it is false to say that the Church has no temporal power, whether direct or indirect. Again, Berchtold is altogether wrong in saying that according to Pius IX. it is heresy to believe that the Popes have *ever* exceeded the limits of their power. That by no means follows from the twenty-third proposition of the Syllabus.[1] This proposition can be subdivided into three or, if the Pope and the Council are to be divided, into six assertions: '1. The (*a*) Roman Popes and the (*b*) Ecumenical Coun-

cils have exceeded the limits of their power; 2. usurped the rights of princes; and 3. erred in the definitions of doctrines of faith and morals.'

The first and second propositions do not refer to a truth revealed by God, but only to historical matters of fact, principally of the Middle Ages;[2] they cannot therefore be described as heretical propositions, but as insulting to the Church and the Holy See, as presumptuous and false; in so far as they imply that unjust interferences and usurpations were habitual, and not merely occasional and exceptional, they are certainly quite untrue. The condemnations of the assertions 2*a* and 3*a* in no way necessitate the supposition that in the exercise of their power Popes have remained free from all faults and mistakes, especially in administrative and private matters. The Brief 'Multiplices inter' of June 10, 1851, from which prop. 23 is taken, mentions the judgment of the Congregation of the Holy Office on the book of Vigil, but does not qualify each separate proposition contained in it.[3] Ecclesiastical jurisdiction with regard to marriage, the right of confirming the election or nomination of bishops, the claim to the free intercourse of the Pope with the bishops and the faithful, were given by Vigil as examples of how Popes and General Councils exceeded the just limits of their authority, and he had spoken in so mischievous and frivolous a manner that this alone would have justified the censure of these propositions. As regards the third assertion, inasmuch as it denies the infallibility of General Councils it is plainly heretical; and inasmuch as it unceremoniously denies Papal Infallibility, it could, before July 18, 1870, have been declared approximate to heresy, and at all events presumptuous and insulting to the Holy See.[4] Therefore the same condemnation would not at all have suited each point of the twenty-third proposition, although each deserved one or other of the ecclesiastical censures.

There can be no question of calling the whole Syllabus dogma, in the sense that all these propositions are *heresies*. The learned opponents of the Vatican Council must know this very well, even though their theological acquirements be some-

what slender. Thus, for example, prop. 12 of the Syllabus, 'The decrees of the Apostolic See and of the Roman Congregations hinder the progress of science,' can be censured as false, presumptuous, scandalous, insulting to the Holy See and to the whole Church; but not as heretical, since it does not immediately or directly militate against revelation nor the truths defined by the Church, and the Pope has never defined it as heretical.

So also prop. 38, 'Many Roman Pontiffs have by their too arbitrary conduct contributed to the division of the Church into Eastern and Western,' is not heretical, but a false assertion,[5] insulting to the Apostolic See. It is the same thing with Professor Nuytz's condemned assertion,[6] that Boniface VIII. had first pronounced that the vow of celibacy taken at ordination made marriage null. That is historically false; for the question had been settled long before by St. Thomas[7] and St. Bonaventure,[8] and before these by the several Councils of the eleventh and twelfth centuries,[9] and earlier still by the legislation of the East.[10] It is likewise incorrect that the doctrine by which the Pope is compared to a sovereign prince was first authorised in the Middle Ages.[11]

[1] Prop. 23: 'The Roman Pontiffs and Ecumenical Councils have exceeded the limits of their power, have usurped the rights of princes, and have even committed errors in defining matters of faith and morals.'

[2] Fessler, Unfehlbarkeit, p. 35.

[3] The book is described as 'continens doctrinas et propositiones *respective* scandalosas, falsas, temerarias, schismaticas, Romanis Pontificibus et Conciliis oecumenicis injuriosas [that exactly applies to the assertions we are considering], Ecclesiae potestatis, libertatis et jurisdictiones eversivas, erroneas, impias et haereticas.'

[4] Cf. Prop. 29 Damn. 7 Dec. 1690, ab Alex. VIII. Denzinger, p. 345, n. 1186.

[5] Cf. Bennettis, de Privileg. B. Petri. P. ii. t. iii. p. 720 seq.

[6] Prop. 72 of Syllabus: 'Boniface VIII. is the first who declared that the vow of celibacy pronounced at ordination annuls marriage.'

[7] Sum. 2, 2, q. 88, a. 7, 11.

[8] In Libr. sent. iv. d. 38, q. 2.

[9] Hefele, Conc. v. pp. 175, 260, 262, 319, 340, 391.

[10] Zsishman, Oriental. Eherecht, p. 475 seq.

[11] Prop. 34 of the Syllabus: 'The doctrine of those who compare the Sovereign Pontiff to a free sovereignty acting in the Universal Church is a doctrine which prevailed in the Middle Ages only.'

Part II. The Propositions of the Syllabus.

§ 1. Prop. 1-18, 77-79. § 2. Independence of the Church as a perfect society. § 3. State interference. § 4. Indirect negative power in religious matters. § 5. The Placet. § 6. Appeal from a spiritual to a temporal judge. § 7. Power of the Church over temporal matters. § 8. Immunities. § 9. Instruction and education. § 10. Princes. Civil and ecclesiastical law. Ordination vows. § 11. Marriage. § 12. The family. Limits of State authority. § 13. Divergence of civil laws from ecclesiastical. § 14, 15. Non-intervention. § 16. Revolution. § 17. Sovereignty of the people. § 18. Practical materialism. § 19, 20. Liberalism. § 21. Errors of modern society. § 22. Folly of the conclusions wrongly drawn from the Syllabus.

§ 1.

We are primarily concerned with those propositions of the Syllabus which treat of the authority of Church and State and their relations to each other. No one will maintain that the propositions 1-7 against pantheism, naturalism, and absolute rationalism are dangerous to the State, unless he identifies the modern State with these systems, denies any divine influence on the world, and considers Christianity itself a danger to the vitality of the State. Again, either propositions 8-14, concerning moderate rationalism, will not be considered dangerous; or Frohschammer's science or philosophy must be considered indissoluble from modern States, and these must feel themselves appointed to enter the lists as its champion.

The propositions about religious indifference and latitudinarianism (15-18) will be spoken of in Essay XVII., as well as the kindred propositions about modern Liberalism (77-79); and propositions 21-23 will also be considered there and elsewhere. The fourth section refers to ecclesiastical condemnation of socialism, communism, secret societies, Bible societies, and of the clerico-liberal unions begun in Italy. The Popes have at all times pointed out the dangers which arise from secret societies; and many rulers refusing to give heed have too late experienced their disastrous effects. When it was asserted that the Papal constitutions against the Carbonari and Freemasons were powerless where these societies were tolerated by the civil go-

vernment,[1] the following facts were entirely overlooked, viz. that the excommunication attached to these constitutions is purely an internal action of the Church, and operates in the ecclesiastical sphere even where unsupported by civil disabilities; that the Church steps in as the real guardian of morals, when such brotherhoods, shrouding their superiors, their aims and objects, in deepest mystery, impose unbounded obligations by fearful oaths. The Church is obliged to oppose the Protestant Bible societies, on account of the propagation of defective and falsified translations and tracts contrary to the faith. Unions of the liberal clergy, as they were formed in Italy, fostered disobedience against the Pope and the bishops, propagated principles opposed to those taught by the Church, and proved themselves thoroughly schismatical, so that even the Italian Government, which they desired to serve, withdrew its support.

[1] Encyclica Quanta cura, § At vero alii of the Prop. 'constitutiones apostolicas, quibus damnantur clandestinae societates, sive in eis exigatur sive non exigatur juramentum de secreto servando, earumque asseclae et fautores anathemate muletantur, nullam habere vim in illis orbis regionibus, ubi ejusmodi aggregationes tolerantur a civili gubernio.'

§ 2.

Offence was likewise taken at the idea that the Church claims recognition as a divinely authorised, true, perfect, and independent society;[1] that she will not allow that temporal authority can determine what her rights are, and within what limits she may exercise them (prop. 19).[2]

Supposing this proposition to be correct, the universality of the Church would be abolished, since different States could give her different rights and set arbitrary limits to her power. Either the Church has received a special and perpetual authority from Christ, in which case she cannot admit that the State has power at will to extend and retrench her authority, or she has not received such divine authority, and then all claim to it is untenable, the whole Church must be rejected, and no one can call himself a Catholic. And is this claim anything new on

the part of the Church? Do not all the works on canon law treat of the essential rights of the Church? Have not the Apostles and bishops exercised such rights before they met with recognition from the State?[3] Have not the Fathers of the Church already rejected with vehemence the interference of the civil power in the domain of ecclesiastical rights?[4] Has the Church ever admitted prop. 20: 'Ecclesiastical power must not be exercised without the permission and consent of the civil government'? Did the Apostles[5] recognise this proposition? If they had, would not the conversion of the Roman Empire have been impossible? Would not the Church have become a mere servant of every government? That there may be particular circumstances in which it is advisable or necessary to have the consent of the civil government for *this* or *that act* of ecclesiastical authority is quite a different thing from the general principle that this consent and permission is absolutely necessary in all cases.

The bishops of the Church have not received any of their privileges from the civil authority,[6] nor can this authority depose or appoint bishops.[7] The Church with her divinely appointed hierarchy does not receive her right of existence from the State; she was established by God by the side of the State and in spite of the State, at a time when the State was hostile to her. As the Church has the right of existence from herself and not from the State, she must in herself have the right of possessing and acquiring property.[8] The Church can as little part with her divine right as she can change the institution of the primacy ordained by Christ, and transfer it from the successors of St. Peter to any other bishop,[9] or as that there can be Catholic national Churches independent of the Roman Pontiffs.

[1] Vid. supra, pp. 24, 25.

[2] Syll. Prop. 19: 'The Church is not a true and perfect and independent society; she does not enjoy peculiar and perpetual rights conferred upon her by her Divine Founder, but it appertains to the civil power to define what are the rights and limits within which the Church may exercise authority.'

[3] Phillips, Kirchenrecht, ii. § 111, pp. 550 seq. 554.

[4] Hosius Cordub. Ep. ad Const. ap. Athan. Hist. Arian. § 41 (Opp. i.

p. 745, Migne). Athanas. l.c. § 52 (ib. p. 756). Basil. ap. Theod. H. E. iv. 17, 19. Ambros. Ep. 51, n. 5 seq. de Obitu Theod. n. 34. Soz. vii. 25. Many proofs of this may be found in Mamachi, Antiqu. t. iv. p. 68 seq.

[5] S. Hilar. adv. Auxent.: 'Quibus nam suffragiis ad praedicandum Evangelium Apostoli missi sunt? Quibus adjuti potestatibus Christum praedicabant? .... Anne aliquam sibi assumebant e palatio auctoritatem? Edictisque regis Paulus Christo Ecclesiam congregavit? Nerone se, credo, aut Vespasiano aut Decio patrocinantibus tuebatur?'

[6] Syll. Prop. 25: 'In addition to the authority inherent in the episcopate, further temporal power is granted to it by the civil authority either expressly or tacitly, which power is on that account also revocable by the civil authority whenever it pleases.'

[7] Syll. Prop. 50: 'The lay authority possesses as inherent in itself the right of presenting bishops, and may require of them that they take possession of their dioceses before having received canonical institution and the apostolical letters of the Holy See.' Prop. 51: 'And, further, the lay government has the right of deposing bishops from their pastoral functions, and is not bound to obey the Roman Pontiff in those things which relate to bishops' sees and the institution of bishops.'

[8] Syll. Prop. 26: 'The Church has not the natural and legitimate right of acquisition and possession.'

[9] Syll. Prop. 35: 'There would be no obstacle to the sentence of a General Council or the act of all the universal peoples transferring the Pontifical Sovereignty from the Bishop and city of Rome to some other bishopric and some other city.'

[10] Syll. Prop. 37: 'National Churches can be established after being withdrawn and separated from the authority of the Roman Pontiff.' Prop. 36: 'The definition of a National Council does not admit of any subsequent discussion, and the civil power can settle an affair as decided by such National Council.'

§ 3.

Other propositions appear even more important, in particular prop. 44: 'The civil authority can interfere in matters relating to religion, morality, and spiritual government. Therefore it has control over the instructions for the guidance of consciences, published conformably with their mission by the pastors of the Church; indeed it can decree in the matter of administering the holy Sacraments and the dispositions necessary for their reception.' This is purely a religious question, in which surely civil authority has no right to interfere. In such cases reference was made to the example of King Ozias,[1] who was punished for exercising priestly functions (2 Par. xxvi. 1-21).[2]

The express mention of the direction 'for the guidance of consciences,' as well as the mention of the administration of the Sacraments, shows that it is primarily a question of moral theology,[3] with which certainly the State cannot interfere. If the question is asked: May not the State protect morality by penal laws, and not simply execute ecclesiastical punishments, the Syllabus does not forbid us to answer in the affirmative, especially if Christian and not heathen morality be presupposed; morality makes common ground between Church and State. These two must not be hostile to each other; they should work in harmony; and this is why the Church rejects[4] the principle of the separation of Church and State. The teaching of the Church can never be detrimental to the well-being of society or of the State.[5]

[1] Innoc. III. l. viii. Ep. 5, pp. 562, 563, ad Archiep. Cant.: 'Si diligenter attenderent, quod Ozias rex Judae fuit in facie lepra percussus pro eo, quod indutus Ephod incensum adolere praesumsit, non praesumerent saeculares super rebus ecclesiasticis, quae ad ipsos non spectant, jurisdictionem aliquam exercere.' Thus even earlier, Petrus Bles. Ep. 10 (Migne, ccvii. p. 30), the Glossa Administrationis to c. v. Imperium, d. 10, and others. Hosius, ap. Athan. ad Mon. § 41, alludes to this, and Chrysostomus, de Verb. Isai. c. vi. n. 1 (Migne, lvi. p. 68), and Facundus of Hermiane (pro Defens. iii. capit. l. xii. c. iii.) treat of it.

[2] Protestant Version, 2 Chron. xxvi. 1-21.

[3] Cf. Flor. Riess, Staat und Kirche.

[4] Syll. Prop. 55: 'The Church ought to be separated from the State, and the State from the Church.'

[5] Syll. Prop. 40: 'The teaching of the Catholic Church is opposed to the well-being and interests of society.'

§ 4.

The forty-first proposition, that the civil government, even when exercised by a non-Catholic sovereign, possesses an indirect negative power over religious matters, is, in the sense used by Professor Nuytz of Turin, who propounded this proposition, certainly of a kind to deserve ecclesiastical censure. For, first, this 'negative' power is something very positive, viz. giving to civil rulers the right at pleasure to render inoperative or to hinder all that belongs to spiritual government; it includes all the measures which were executed in

the kingdom of Sardinia against the Church from 1848 to 1851, from which she had to endure that the State should arbitrarily determine what was and what was not under her dominion.[1] Secondly, it is an assertion which far exceeds Gallicanism, which at least presupposes the 'most Christian' king, and does not adjudge such a power to a non-Catholic prince. Thirdly, from this assertion is derived not only the right of 'exsequatur' or 'placet,' but also the right of 'appel comme d'abus,' which the Church never has acknowledged and never can acknowledge. The Church can never admit that ecclesiastical ordinances receive their validity from the civil power; that apostolical letters, even apostolical dispensations, require the sanction of the State to make them valid;[2] that the civil power has the right to prevent the free intercourse of the faithful and bishops with the Head of the Church.

[1] Riess, l.c. § 125 seq. p. 120 seq. Opinion of the Würzburg Theol. Faculty of July 7, 1869, ad ii. § 38, p. 32.

[2] Syll. Prop. 28, 29: 'Bishops have not the right of promulgating even their apostolical letters without the sanction of the government' (28). 'Dispensations granted by the Roman Pontiff must be considered null, unless they have been requested by the civil government' (29).

§ 5.

Both these 'rights' are of quite recent origin. The Placet (placetum regium), by which the promulgation and execution of ecclesiastical publications were made dependent on the approval of the State, appeared in many countries, and was first raised to an abiding measure,[1] at the time of the great schism of 1378. Urban VI. at that time allowed several prelates to submit Bulls and Briefs to civil officials for acknowledgment before allowing them to be published in their dioceses, on account of the numerous Papal documents propagated by the antipope. In many places efforts were made to raise this temporary concession into a custom, and orders were given against apostolic documents being carried into effect which had not been acknowledged by the forms 'placet,' 'vidimus,' &c., wherefore Martin V. published a special Bull[2] against it. But

soon afterwards the measures became more frequent and by degrees more extended.[3] Several Popes[4] protested against it, and lastly the Vatican Council[5] also.

And with perfect right. Had the civil power been allowed the privilege of making the publication of the laws of the Church depend on its good pleasure and consent, the Church would be governed not by a divinely appointed hierarchy, but by a temporal sovereignty. For if the necessary publication of every law were limited by another power and dependent on its good-will, this power in fact would become the legislator, and in changing its duty of protection into a right of ratification could refuse its consent to any ecclesiastical resolution which was displeasing to it.[6] The Placet rigorously carried out would have destroyed the unity of the Church, and have led to religious anarchy and to the absolutism of the State.[7] It proves a great aversion to and distrust of the Church, as if she were most dangerous to the State; it cannot proceed from the right of protection, to which it is all the more opposed, that the State cannot and ought not to protect what it believes to be hurtful and pernicious.[8] The Placet is an anomaly in modern times, when States admit no force in any ecclesiastical censure, proclaim liberty of conscience, of association, and of the press, and promise equal rights to all men.[9] Furthermore, like Proteus, the Placet assumes different characters, has its basis now on this and now on that pretension of State power, and receives sometimes greater and sometimes less extension.[10] Theory as well as practice, literature as well as legislation, have made various exceptions in its application: here and there the decisions of the Roman Penitentiary in secret cases of conscience,[11] publications containing purely spiritual matters, dogmatic Bulls,[12] dispensations, episcopal Lenten pastorals, were not considered as coming under the Placet; whilst in other places every kind of ecclesiastical publication required its authorisation, even those constitutions which had already received the Placet 'each time they are used,' as was determined by the edict for the ecclesiastical province of the Upper Rhine, January 30, 1830, in which edict State interference seems to have culminated.[13]

The Placet is quite inefficacious when a dogmatic definition is concerned, for this binds the conscience independently of a formal proclamation.[14] As soon as the faithful know of a definition in matters of faith and morals made by the Church, they are bound in conscience by it. The declaration and explanation of revealed truth can no more depend upon the State in our times than in the heathen Roman Empire. Powerful States and powerful rulers have had no need of the Placet; even now many States do not know of it, and lose thereby none of their sovereignty.

[1] In England it was already pretty well in use in the 11th and 12th centuries, in Portugal in the 13th. Papius, Zur Geschichte des Placet, Archiv seq. Kath. Kirchenrecht, 1867, vol. xviii. p. 166 seq.

[2] Const. Quoad antidota, in which the above is given.

[3] Papius, l.c. p. 170 seq. Phillips, iii. § 135, p. 353 seq.

[4] Roscovány, Monum. t. i. pp. 117, 118, 203, 205, 227, 300.

[5] Const. Pastor aeternus, c. iii. § Porro ex suprema.

[6] Droste of Bischering, Ueber den Frieden unter der Kirche und den Staaten, p. 106 seq. Phillips, Kirchenrecht, ii. § 112, p. 565. Cf. V. Haller, Restauration der St. Wissenschaft, vol. iv. § 408. Beidtel, Das Canonische Recht, pp. 288-290. Tarquini, Del regio Placet Dissert. Roma, 1852.

[7] Rotteck, Staatslexicon, vol. ix. p. 299.

[8] Phillips, l.c. p. 566. Beidtel, p. 294.

[9] Riess, l.c. p. 135, § 143. V. Papius, l.c. p. 233 seq. 237. Beidtel, p. 292.

[10] Beidtel, p. 289. Cf. also Gewart's Opusc. contra Espenii Doctrinam de Placeto regio, Lovan. 1830.

[11] Papius, pp. 217, 218. The old parliament had excluded these from the Placet, the organic articles included them in it. The decree of the Austrian Court of July 23, 1782, had exempted the publications of the Penitentiary from the Placet, ib. p. 208.

[12] Papius, p. 203 seq.

[13] Papius, p. 222.

[14] Van Espen, Tract. de Promulg. Leg. Eccl. P. v. c. ii. § 1: 'Itaque nequaquam dependet a publicatione vel executione decreti seu Bullae dogmaticae, ut quis dogmati assensum fidei praebere teneatur, eo quod praeveniendo omnem publicationem et executionem teneatur quis fide divina credere dogma, quod ipsi sufficienter constat ex divina revelatione esse traditum.' Cf. De Marca, de Conc. l. ii. c. x. § 9.

§ 6.

The right of appeal from spiritual to temporal judges, granted on account of pretended abuses, is of the same character as the

Placet, and was rejected with it in the Syllabus.[1] The 'appel d'abus' spread from France[2] into other countries. This alleged right makes the civil power superior to the spiritual, and substitutes for *possible* abuse of ecclesiastical power an *actual* and *continuous* abuse of civil power. Every legislator is the interpreter of his laws;[3] as in civil matters there exists the right of appeal from lower to higher civil judges, so also in the Church there is a canonical series of appeals from lower to higher spiritual judges.[4] The ecclesiastical judge has to decide according to ecclesiastical law, which is independent from the State, and therefore not subject to the interpretation of a civil judge, who decides according to civil law, and has no legal title to guard the laws of the Church. If the spiritual judge were to overstep his boundary and encroach on civil jurisdiction, the State would naturally have the right to reject the judgment and prevent its execution.[5] But this is beside the present question. No appeal takes place, but the State simply declares the judgment as proceeding from an incompetent tribunal to be null and void. If however the spiritual judge confines himself within the limits of his authority, the civil power has no right to interfere. No such right comes from the Church, by whom, on the contrary, interference has been forbidden most stringently;[6] nor from the nature of the civil authority, which is only competent in its own sphere, and cannot legislate for the Church, cannot bestow spiritual jurisdiction, nor even decide with certainty concerning its abuse. Moreover, the abuse of a power is no reason for its ceasing to exist, or for its becoming subject to another power, otherwise no power would be possible amongst men.[7] In France this measure, which has been maintained by the 'organic articles,' has practically only led to the greatest inconvenience, violence, and absurdity.[8]

[1] Syll. Prop. 41: 'The civil government, even when exercised by an infidel sovereign, possesses an indirect and negative power over religious affairs. It, therefore, possesses not only the right called that of *exequatur*, but also that of the (so-called) *appellatio ab abusu*' [appel comme d'abus].

[2] See Essay XV. on ecclesiastical jurisdiction.

[3] L. ult. Cod. i. 14, de Leg.; c. xxxi. de Sent. Excom. v. 39.

[4] Phillips, Kirchenrecht, p. 570 seq. Beidtel, p. 285 seq.

[5] Cf. De Marca, de Conc. l. iv. c. xxvii. Walter, § 46c, p. 91.

[6] Conc. Antioch. 341, c. xi. 12 (c. ii. C. xxi. q. 5). Conc. Agath. et Greg. M. (ib. c. i. 6). Martin V. Const. i. Febr. 1428, Ad reprimendas, Bull. Rom. ed. Rom. iii. ii. p. 459. Roscovány, Mon. i. pp. 109-111. Sixt. IV. Const. 1471. Leo XII. Ep. ad Gall. Reg. a. 1824. Trid. Sess. xxv. de Ref. c. iii. partially refers to this.

[7] M. Liberatore, l.c. c. iii. art. 5, p. 270.

[8] Cf. Cormenin, in the Encyclopédie du xix. Siècle, v. Concordat (also Liberatore, l.c. pp. 273-278, 308, 309).

§ 7.

The Church, as a visible body, cannot consent to be refused every kind of judicial capacity and dominion over temporal and material things. The twenty-fourth proposition[1] is in two parts: one denies to the Church that coercive and penal authority which she has always exercised.[2] Deprived of them she would have no external court of justice (forum externum), no censures, no punishments, and would be in a worse position than any private society, which by means of statutes can inflict fines, or otherwise punish negligent or disobedient members. The other part denies all temporal power to the Church, whether direct or indirect.

The Church has exercised a *direct* temporal power in the States of the Church and in the possession of temporal goods and privileges; she justly rejects the assertion that the ministers of the Church, and the Pope in particular, ought to be excluded from all charge and dominion over temporal affairs;[3] that amongst Catholics it ought to be very questionable whether the civil power is compatible with the spiritual in the Head of the Church;[4] and that the abolition of the temporal dominion of the Holy See would largely contribute to the liberty and happiness of the Church.[5] The groundlessness of these opinions has often been proved,[6] and it seems to have fallen to our days to give a proof that shall be visible to all eyes. *Indirectly* the Church must exercise her power over temporal things; for it is her duty to admonish the faithful on the one hand not to misuse their earthly possessions, nor squander them on unworthy objects, but to employ their superfluity in favour of those in need; and on the other hand, when in poverty to have recourse to patience, to limit their desire for enjoyment, to be frugal and sparing.[7] She must oppose the service of Mammon, must teach her children to

use temporal things, so that they lose not those things which are eternal;[8] she must protect her temporal goods, and forbid sacrilege under pain of censure;[9] she must exercise her office where temporal matters trench upon her sphere. To say she has *not any* temporal power (potestas ulla temporalis) is to drive her from her place in the actual world, where her task lies; to deprive her of those possessions which she defends as useful and necessary to her for its accomplishment, which she has acquired with perfect right, and maintains without intermixing the spiritual and temporal order.[10] For the very reason that the Church is not an invisible institution, but a visible, true, and perfect society for men and amongst men, she is bound to engage in temporal affairs *as far as her aim requires.* Exterior and interior things both belong to her worship as to her life. If she were limited to what is purely interior she would not even be in a position to administer her Sacraments, and would evaporate into a purely spiritual society.

[1] Syll. Prop. 24: 'The Church has not the power of availing herself of force or any direct or indirect temporal power.'

[2] See Essay XVII. on the Church and liberty of conscience.

[3] 'The ministers of the Church and the Roman Pontiff ought to be absolutely excluded from all charge and dominion over temporal affairs.' Syll. Prop. 27, from the Allocution Maxima quidem, June 9, 1862.

[4] 'The children of the Christian and Catholic Church are not agreed upon the compatibility of the temporal and spiritual power.' Syll. Prop. 75, from the Apostolic Brief Ad Apostolicae, Aug. 22, 1851.

[5] 'The abolition of the temporal power of which the Apostolic See is possessed would contribute in the greatest degree to the liberty and prosperity of the Church.' Syll. Prop. 76, from the Allocution Quibus quantisque, April 20, 1849, on Mazzini's Roman Republic.

[6] Pignatelli, Consult. Can. t. iii. Cons. 6, n. 15 seq. p. 16 seq.

[7] The Encyclical of Dec. 8, 1864, pronounces against the Prop.: 'Ecclesiam nihil debere decernere, quod obstringere possit fidelium conscientias in ordine ad usum rerum temporalium.'

[8] Collect for 3d Sunday after Pentecost: 'Ut te rectore, te duce sic transeamus per bona temporalia, ut non amittamus aeterna.'

[9] Cf. Opinions of the Würzburg Theol. Faculty of July 7, 1869, ad ii. § 39, 40, pp. 33, 34.

[10] Before the above-quoted proposition the Encyclical Quanta cura censures this other: 'Excommunicationem a Concilio Tridentino et Romanis Pontificibus latam in eos, qui jura possessionesque Ecclesiae invadunt, et usurpant, niti confusione ordinis spiritualis, ordinisque civilis ac politici ad mundanum dumtaxat bonum prosequendum.'

§ 8.

The immunity of the clergy, stated in the Syllabus, also gives great offence.[1] But the assertion, 'The immunity of the Church and of ecclesiastical persons derives its origin from civil law,'[2] must already have been condemned, inasmuch as it contradicts the Council of Trent, according to which this immunity is established by the ordinance of God and canon law. This is expressly added to the Brief of June 10, 1851, from which the proposition was taken.[3] Moreover, the Church and theology have only opposed the theory that ecclesiastical immunities were entirely derived from the civil law.[4] With perfect reason the Church holds fast to her rights, and nothing is more natural than the rejection of the proposition: 'Ecclesiastical jurisdiction for the temporal causes of the clergy, whether civil or criminal, ought by all means to be abolished, even without the concurrence and against the protest of the Holy See;'[5] or of this one: '*Without any violation af natural law or equity* personal immunity exonerating the clergy from military service may be abolished; its abolition is called for by civil progress, especially in a community constituted upon principles of liberal government.'[6] But if ever anything were a violation of natural law and equity it is the forcible drawing of the clergy into military service; it is totally opposed to their office, renders the education necessary for their difficult vocation still harder, and even impossible, deprives the Church of the necessary number of ministers, and in many places leaves Christian people without pastors. The necessity for exempting ecclesiastics from military service has been recognised even by non-Catholic governments, and is required by the very nature of the case. It is neither just nor wise to make unsuitable demands upon a body which in its own way is useful to the State, merely for the sake of a mechanical and external universal equality, which from purely natural reasons can never be attained. By drawing the clergy into barracks the esteem in which the priesthood is held, the dignity of religion, the exercise of worship, the education of those desirous of entering the priesthood, the influence and care of the Church

over her ministers would all materially suffer; it is therefore a great injustice, and most disadvantageous to Christian people, who have never opposed this 'privilege' of immunity, and who, moreover, have even considered it necessary and a matter of course.

Holy Scripture says no one can serve two masters (Matt. vi. 24); priests remain unmarried to serve God better and undividedly (1 Cor. vii. 32, 33); soldiers of Christ (2 Tim. ii. 3) cannot also be soldiers of the world, nor involve themselves in secular concerns (ib. iv.); especially must they kill no one (1 Tim. iii. 3; Tit. i. 7). The Church has, on grounds taken from Scripture, forbidden her clergy to bear arms and engage in war;[1] and even the Liberals of our day acknowledge she is right, by deriding the warlike bishops of the Middle Ages, many of whom only took the field to protect their territory. Military service presents an ecclesiastical impediment to ordination, from the want it involves of the necessary meekness of heart enjoined by divine command.[8] How is it possible to abolish the exemption of the clergy from military service 'without any violation of natural law and equity'? The abolition of a free spiritual jurisdiction would be less absurd, as not in itself and in the same way contradicting the natural law; wherefore in this concessions have from time to time been made, even by Popes. It only follows from the thirty-first proposition that in a country where till then the Church had entire jurisdiction over ecclesiastics the civil power is not justified in abolishing such jurisdiction simply by its own act, without the consent of the Head of the Church, or without paying regard to his protest, however reasonable. This not merely shows disdain of the Church, but violates her existing rights. Still less can the civil power simply by its own authority abolish Concordats, which guarantee such rights.[9]

[1] Among others to Mr. Gladstone, Expostulation, p. 17. [Tr.]
[2] Syll. Prop. 30.
[3] Cf. the Ratisbon edition of the Encyclical and Syllabus, p. 59.
[4] Vide suprà, pp. 38-40.
[5] Syll. Prop. 31, Alloc. of Sept. 27, 1852, against New Granada, and of Dec. 15, 1856, against Mexico. In 1521 the Sorbonne described th

following proposition of Luther's, 'Si imperator vel principes revocar libertatem datam personis et rebus ecclesiasticorum, non potest eis resisti sine peccato et impietate,' to be 'falsa, impia, schismatica, libertatis ecclesiasticae enervativa ac impietatis tyrannicae excitativa et nutritiva' (Du Plessis, t. i. P. ii. p. 373, tit. 17). We have lately heard this proposition of Luther publicly repeated in a tribune.

[6] Syll. Prop. 32, from the letter of Sept. 29, 1864, to the Archbishop of Monreale, concerning the new Italian law, which was even described as hard and unjust by General La Marmora. In Piedmont, in 1854, the number of clergy who were not bound by the conscription was reduced to one for every 20,000 souls. The new law abolished every exemption of the priesthood from military service.

[7] Can. 5, 6, dist. 50; c. un. d. 53; c. xv. d. 63; c. l. iv. d. 51; c. xxiii. q. 8; c. ii. de Vita et Honest. Cler. iii. 1, Nicol. i. Ep. 27 (Mansi, xv. 291). Thomassin, P. iii. l. i. c. xviii. n. 4 seq.; c. lxx. n. 8, 10 seq.; c. lxxv. n. 1 seq.

[8] Phillips, K. R. i. § 50, p. 488 seq.

[9] Syll. Prop. 43: 'The lay power has the authority to rescind, declare and render null solemn conventions or *concordats* relating to the use of rights appertaining to ecclesiastical immunity, without the consent of the Apostolic See, and even in spite of its protest.'

§ 9.

A further set of propositions refers to education in general, and in particular to that of the clergy. They are the following: '33. It does not appertain exclusively to ecclesiastical jurisdiction, by any proper and inherent right, to direct the instruction of theological subjects.[1] 45. The entire direction of public schools in which the youth of Christian States are educated, except (to a certain extent) in the case of episcopal seminaries, may and must appertain to the civil power, and belong to it so far that no other authority whatsoever shall be recognised as having any right to interfere in the discipline of the schools, the arrangements of the studies, the taking of degrees, or the choice and approval of the teachers.[2] 46. Further even, in clerical seminaries the mode of study to be adopted must be submitted to the civil authority.[3] 47. The best theory of civil society requires that popular schools open to the children of all classes, and generally all public institutes intended for instruction in letters and philosophy, and for conducting the education of the young, should be freed from *all* ecclesiastical authority, government, and interference, and should be *completely* subjected to the civil and political power, in con-

formity with the will of rulers and the prevalent opinions of the age. 48. This system of instructing youth, which consists in separating it from the Church, and in teaching it exclusively the knowledge of natural things and the natural ends of life, may be perfectly approved by Catholics.'[4] Two proposals are here censured: the first abandons schools exclusively to the direction of the State, and withdraws them from the influence of the Church, without however assailing their Christian character; the second destroys their Christian character by separating them from religion and the Church, and provides a merely secular worldly education. It is the duty of the Church to oppose both these proposals, and she can do so without violating any civil right; whilst the State in enforcing them greatly prejudices the rights both of the Church and of individual Catholics.

[1] The letter to the Archbishop of Munich declares positively: 'Ad quam (potestatem ecclesiasticam) proprio ac nativo jure unice pertinet advigilare ac dirigere theologicarum praesertim rerum doctrinam.'

[2] Cf. Reiss, Der Moderne Staat und die Christliche Schule, p. 6 seq.

[3] This occurred in the S. American republics, to which the Allocution Nunquam fore, Dec. 15, 1856, referred.

[4] Both the latter propositions are taken from the letter to Archbishop Hermann of Freiburg, July 14, 1864. Riess, l.c. p. 12 seq.

§ 10.

Proposition 54,[1] which has many adherents in our time, is much more plausible. The Church, it is said, by condemning this proposition becomes the judge of all measures of government. The censured proposition came from Francis of Paul G. Vigil, concerning whom the Papal letter of June 10, 1851, thus speaks: 'Kings and other princes *who by baptism have become members of the Church* he withdraws from the jurisdiction of the Church, *exactly as though they were pagan kings*, and as if *in spiritual and ecclesiastical matters* Christian princes were not the sons and subjects of the Church; nay, *confounding heavenly* with *earthly things*, *sacred* with *profane*, *high* with *low* in a monstrous manner,[2] he is not afraid of teaching that in litigated questions of jurisdiction the secular power stands higher than the Church, which is the pillar and the ground of the truth'

(1 Tim. iii. 15). Is it possible seriously to assert that Catholic princes are exempt from the jurisdiction of the Church in spiritual and ecclesiastical matters? In that case they must also have ceased to be members and sons of the Church, or to belong to the kingdom of Christ, which is quite inadmissible.[3] Can it be further maintained that in questions of ecclesiastical jurisdiction princes are superior to the Church? Ecclesiastical jurisdiction only extends over spiritual things; were the Church to acknowledge the sovereign of the State as her superior, the independence of the spiritual power would be lost, the reigning prince would be the supreme bishop, as with Protestants, and Cæsaropapism would be established.[4] But if the decision of questions of jurisdiction were referred to the borderland between Church and State, Vigil's assertion of the superiority of princes over the Church would coincide with the assertion of J. N. Nuytz,[5] condemned in proposition 42: 'In the case of conflicting laws between the two powers, the civil law ought to prevail.' This proposition, repeated times without number, is certainly false: were it true, the first Christians should unconditionally have obeyed the laws of the heathen emperor against Christendom and renounced the faith; the martyrs would have been rebels, their heroism criminal madness; the fixed principles of ecclesiastical legislation would have to yield to fluctuating State laws, different in every land, and the Church would no longer be able to maintain a single point.[6] If religious order takes precedence of political order, the laws of the Church cannot be secondary to the laws of the State.[7] The Church is the interpreter of the divine law, and as such must claim superiority.[8] But, it might be objected, every law of the Church is not a law of God, neither are all the laws of the Church founded on the laws of God; there are laws of discipline in the Church, which admit of change. Certainly; but it is nevertheless wrong to assert the superiority of the civil law *in every case*, for this also is changeable, and in a still higher degree. A civil law relating to purely spiritual matters oversteps the power of the civil legislator, neither is the discipline of the clergy within his province.[9] Discipline, in many parts, is so closely connected with dogma as to be inseparable from it.[10]

In a conflict, that power generally has the right whose end in respect to the matter in dispute is the most important; and regard has always to be paid in the particular case to the magnitude of the obligation, to the difference between affirmative and negative laws, to the greater or less the necessity, and in general to the doctrines of morality concerning conflicting duties.[11] The Church has often in a conciliatory manner declared herself ready to modify,[12] and has modified, laws of minor importance at the proposal or demand of the State, which has here an easy remedy for its grievances. In the course of historical development many matters once of a purely spiritual character are so no longer;[13] but for such cases the civil government cannot legislate alone; it must come to an understanding with the Church about the desired modifications of ecclesiastical discipline, and must still recognise the Church as independent in her own province.[14] An example is afforded by ecclesiastical legislation concerning the requisite age for taking the solemn vows of religious profession. The decrees of the Council of Trent[15] on this subject were disapproved by many civil governments, who even made other regulations contrary to the personal freedom of Catholic subjects and to the rights of the Church. Pius IX. considered their objections as far as they were reasonable, and prescribed a more advanced age for religious profession,[16] but with perfect justice he censured the assertion: 'The (civil) government *has of itself the right* to alter the age prescribed by the Church for religious profession, both of men and women, and may enjoin upon all religious establishments to admit no person to take solemn vows without its permission' (prop. 52).[17] State interference in the religious life has, under the influence of an antichristian spirit, very often led to the complete destruction of religious orders, which are so beneficial to the Church. So it has been in South America and Italy, and the assertions made: 'The laws for the protection of religious establishments and for securing their rights and duties ought to be abolished, nay more, the civil government may lend its assistance to all who desire to quit the religious life which they have undertaken, and to break their vows. The government may also

suppress religious orders, collegiate churches, and simple benefices, even those belonging to private patronage, and submit their goods and revenues to the administration and disposal of the civil power' (prop. 53).[18] When the Pope opposes such assertions, which are put into practice as soon as made, surely he is only protecting purely ecclesiastical rights. Religious orders, who have done so much good, especially in South America and in Italy, helping and consoling the poor, and showing them a bright example of voluntary poverty, have, by observing the evangelical counsels, and practising the virtues of obedience, chastity, and poverty, given unpardonable offence to the enemies of Christianity, who in hating them hate Christ Himself. Unworthy members of religious orders are therefore incited by these enemies of Christianity to revolt. Those in power are urged to suppress monastic institutions, seeking thereby to make it impossible for any to follow their vocation to a more perfect life. This is a grievous encroachment upon individual religious liberty.[19] With regard to the suppression of simple benefices, collegiate churches, and religious houses, Popes have often made great concessions to the civil government, and have taken into consideration any objections that were advanced; but as the establishment of such institutions strictly belongs to the Church, they can only be abolished by her, and for canonical reasons.

[1] 'Kings and princes are not only exempt from the jurisdiction of the Church, but are superior to the Church in litigated questions of jurisdiction.'

[2] Vigil did not distinguish between king as a man and as a sovereign, but absolutely asserted the exemption of kings from the Church's authority on account of their royal dignity.

[3] Ambros. de Basil. tradend: 'Imperator bonus intra Ecclesiam, non supra Ecclesiam.' Joh. VIII. in c. xi. d. 96: 'Si imperator Catholicus est . . . . filius est non praesul Ecclesiae.'

[4] Concerning this, John VIII. says, l.c.: 'Ad sacerdotes Deus voluit, quae Ecclesiae disponendae sunt, pertinere, non ad saeculi potestates.' Cf. Joh. Dam. Or. ii. de Imag. n. 17. Theod. Stud. l. ii. Ep. 129.

[5] Brief of Aug. 22, 1851, Ad Apostolicae.

[6] Chilianeum, vol. vi. p. 398.

[7] Nicol. I. c. i. d. 10: 'Lex imperatorum non est supra legem Dei, sed subtus. Imperiali judicio non possunt ecclesiastica jura dissolvi.' Cf. Ambros. in Can. 21, c. xxiii. q. 5.

[8] Phillips, K. R. ii. § 109, p. 530, § 110, p. 538.

[9] The assertion of the king's advocate, François Grimauldet, n. 6, 'Le second point de la religion est en la police et discipline sacerdotale, sur le quel les rois et princes chrétiens ont puissance d'icelle dresser, mettre en ordre et réformer icelle corrompue,' was condemned in 1560 by the Theological Faculty of Paris as a 'propositio falsa, schismatica, potestatis ecclesiasticae enervativa et haeretica, et probationes ad illam sunt impertinentes' (D'Argentré, Collect. Judiciorum, t. ii. P. i. Paris, 1728, pp. 291, 292).

[10] Brief of Pius VI. to Card. Rochefoucault, March 10, 1791, § Sed priusquam. ed. sep. p. 24.

[11] Kreittmayer, in Cod. Civil. Maximil. P. i. c. ii. n. 13.

[12] *E.g.* Gregory VII. suprà.

[13] Phillips, K. R. ii. § 110, p. 540 seq.

[14] Card. Antonelli to the Sardinian consul, July 19, 1850 (Acta Pii IX. vol. ii. p. 166): 'La sola Chiesa, la quale non ha limiti di territorio, è dessa dovunque l'arbitra della sua disciplina. Essa giudica della convenienza e della maggiore o minore extensione de' suoi diritti riguardo al loro esercizio, e se *accomodandosi* tal volta *alle esigenze degli Stati modifica in parte*, ciò lo fa di propria autorità, non potendo a causa della sua indipendenza esservi costretta dal supremo potere civile. Quandi è che se lo Stato in alcuni casi di disciplina ecclesiastica connessi con l'interna sua amministrazione stimi *per motivi di opportunità o di ragione politica necessarie alla sua quiete od alla sua properità alcune modificazione della disciplina medesima, deve esse provocarle presso il potere competente*, che è la Chiesa, *deve mettersi d' accordo con questa*, e non ha diritto di farlo di sola propria autorità, come lo farebbe, ove si trattasse di modificare ed anche di abolire le prerogative e li privilegii delle civili università e collegi, che sono nello Stato e perciò dipendenti de esso.'

[15] Trid. Sess. xxv. c. xv. de Regul. et Monial.

[16] Decret. S. Congr. Episc. et Regul. March 19, 1857, for Austria; then the Brief of Feb. 7, 1862.

[17] Alloc. of Dec. 15, 1856 (concerning South America).

[18] Alloc. of Sept. 27, 1852, and of Jan. 22 and July 26, 1855.

[19] Brief of Pius VI. to Card. de Rochefoucault, of Mar. 10, 1791: 'Regularium abolitio, a conventu nationali plaudente haereticorum commentis decreta, laedit statum publicae professionis consiliorum evangelicorum, laedit vivendi rationem in Ecclesia commendatam tamquam apostolicae doctrinae consentaneam, laedit ipsos insignes fundatores, quos super altaribus veneramur, qui nonnisi a Deo inspirati eas instituerunt societates.' With regard to Luther's proposition, 'Suadendum, ut vota prorsus omnia tollantur aut vitentur,' the Sorbonne declared in 1521: 'Haec propositio est Christi doctrinae et SS. Patrum observationi, qui vovere consulunt, contraria, ex errore procedens Lamperianorum, Wiclefistarum et eorum, qui se jactabant de ordine Apostolorum' (Du Plessis, t. i. P. ii. p. 368).

§ 11.

There is nothing in the Syllabus concerning Christian marriage other than the doctrine of the Church concerning the sacrament of marriage consistently carried out. The Pope, following the Council of Trent, maintained against Nuytz that marriage had been raised by Christ to the dignity of a sacrament.[1] The same Council declared the sacrament to be inseparable from the (natural) contract;[2] and in consequence it follows that the sacrament of marriage does not only consist in the nuptial blessing given by the priest.[3] It has been dogmatically decided that by the natural law the marriage tie is indissoluble;[4] whence it follows that civil authority cannot sanction divorce. The right of the Church to introduce impediments that invalidate marriage has been protected by the same Council.[5] This right was derived by F. G. Vigil from the concession of civil princes, for whom also he claimed the privilege of abolishing the impediments introduced by the Church. Both these views had been already condemned by Pius VI. in his dogmatic Bull of 1794.[6] The Church claims for herself alone the power of imposing impediments invalidating marriage, of dispensing from them, and of deciding as to the validity of marriages, but without thereby excluding the State from legislating on marriage in its civil character.[7] It is not in itself objectionable that the State should require for the civil recognition of a marriage something beyond what the Church asks. 'It is the duty of every Catholic to obey the laws of the State. The only exception which can be made to this duty is when the civil law ordains anything that is forbidden by the divine law, or *vice versâ* forbids what the latter ordains. Therefore civil directions concerning marriage must be obeyed. Consequently, all impediments either invalidating or impeding marriage[8] which rest merely on the civil laws are canonically impediments impeding marriage.'[9] The Religious Edict in Bavaria indeed declares, § 64*d*, 'marriage laws, in as far as they relate to the civil contract and its effects,' to be civil matters; and the marriage and domestic laws of April 25, 1868, art. 33, declare every marriage *to be civilly invalid* which had taken place with-

out the certificate of the non-existence of civil impediments given by the appointed (civil) functionary, and to continue *to be civilly invalid* until the certificate was obtained. But it does not at all follow that on account of prop. 68 of the Syllabus the latest Bavarian marriage-laws 'are null and void in their essential parts,' as some think; for by the teaching of the Church these State demands are to be obeyed entirely; civil invalidity does not encroach upon the ecclesiastical domain, which the Church alone defends, and the aforesaid proposition of the Syllabus goes no further than the Council of Trent. The latter moreover declares clandestine marriages to be true marriages as long as the Church has not declared them invalid; likewise those marriages which have been contracted without the consent of the parents.[10] And nevertheless several civil laws had declared both these classes of marriages civilly illegal, before as well as after the Council of Trent.[11] It is the Council of Trent, therefore, that should be complained of rather than the 'new dogmas.' The Church has only to decide of the validity of the sacrament; the State, of the civil effects; the Church does not deny the value of every civil impediment, but only of that one which would annul the sacrament and the bond which it creates. A dogma is here in question, and the assertion[12] of Nuytz, reproduced from those of Launoy, Marcus Antonius de Dominis, and the pseudo-synod of Pistoja,[13] that the canons of the Council of Trent must be considered either not dogmatic or to presuppose power conferred upon the Church by princes, has long been shown to be untenable.[14] The Church is obliged by her dogmas to maintain that the form of solemnising marriage prescribed by the said Council (in every place where this formula has been promulgated) binds, under pain of nullity; that the civil law cannot appoint another form on which the validity of the marriage shall depend.[15] Likewise the Church cannot allow that amongst Christians a merely civil contract constitutes an entirely valid marriage; she maintains that a valid Christian marriage is also a sacrament, and without a sacrament has no validity.[16]

With regard to the condemned prop. 74, 'matrimonial

causes and betrothals belong *by their nature* to civil jurisdiction,' by which it was insinuated that they had become to belong to the Church merely by favour of the State, the Council of Trent[17] declared dogmatically that matrimonial causes, amongst which betrothals must be included, should be judged by ecclesiastics; and seventy years before the appearance of the Syllabus the thesis of the Synod of Pistoja, that formal betrothals were a purely civil act, a preparation for the contract of marriage, and subject absolutely to the regulations of the civil law, was condemned by Pius VI.[18] in a dogmatic Bull as false, and as violating the right of the Church in regard to the effects resulting from the betrothals in virtue of canon law; also as derogatory to the established discipline of the Church. For an act preparatory to a sacrament is in this respect subject to the jurisdiction of the Church.

[1] 'It cannot be by any means tolerated to maintain that Christ has raised marriage to the dignity of a sacrament.' Syll. Prop. 65, from the document of Aug. 22, 1851, Coll. Trid. Sess. xxiv. Can. 1, de Sacram. Matr.

[2] 'The sacrament of marriage is only an adjunct of the contract and separable from it, and the sacrament itself only consists in the nuptial benediction.' Syll. Prop. 66, from the same document, according to Trid. l.c. cap. Doctr.: 'Gratiam vero, quae naturalem illum amorem perficeret, &c. Cum igitur matrimonium in lege evangelica,' &c.

[3] Bened. XIV. de Syn. Dioec. l. viii. c. xiii.

[4] 'By the law of nature the marriage tie is not indissoluble, and in many cases divorce, properly so called, may be pronounced by the civil authority.' Syll. Prop. 61, from the document referred to, and the Allocution of Sept. 27, 1852, Coll. Trid. l.c. Doctr. et Can. 5, 7.

[5] 'The Church has not the power of laying down what are diriment impediments to marriage. The civil authority does possess such a power, and can abolish impediments that may exist to marriage.' Syll. Prop. 68, against Vigil, Coll. Trid. l.c. can. 4. 'In the better ages, the Church, when she laid down certain impediments as diriment to marriage, did so not of her own authority, but by a right borrowed from the civil power.' Prop. 69 against J. N. Nuytz.

[6] Const. Auctorem fidei, Prop. 59, 60 (Denzinger, Enchirid. ed. iv. p. 409, n. 1422 seq.).

[7] Phillips, Lehrbuch, § 270, p. 944 seq. i. ed.

[8] Impediments to marriage are either *impedimenta dirimentia*, which invalidate a marriage—make it null; or *impedimenta impedientia*, which impede a marriage—make it unlawful, but do not make it null. [Tr.]

[9] Schulte, Lehrbuch, § 155, p. 433.

[10] Trid. Sess. xxiv. c. viii. de Ref. Matr.

[11] In France, for instance, edict of Henry II. 1556, of Henry III. 1579, of Louis XIV. 1692 (Schulte, Eherecht, p. 496).

[12] 'The canons of the Council of Trent, which pronounce censure of anathema against those who deny the Church the right of laying down what are diriment impediments, either are not dogmatic, or must be understood as referring to such borrowed power.' Prop. 70 of Syll.

[13] Launojus, de Reg. Potest. in Matrim. Paris, 1674 (condemned at Rome on Sept. 10, 1688). M. A. de Dominis, de Rep. Christ. l. ii. c. xi. Const. Auctorem fidei, Prop. 59.

[14] Cf. Judicium Doctrinale Archiep. Mechlin. (Card. Frankenberg), of June 26, 1789 (Kutschker, Eherecht, i. pp. 70-74); Defensio Trid. Canonum de Eccl. Potest in dir. matr. imped. Auctore Petro Deodato, Neapoli, 1786; Nuova difesa dei canoni, 3 e 4 della Sess. xxiv. del Concilio di Trento, Napoli, 1788.

[15] 'The form of solemnising marriage prescribed by the said Council, under penalty of nullity, does not bind in cases where the civil law has appointed another form, and decrees that this new form shall effectuate a valid marriage.' Syll. Prop. 71.

[16] 'A merely civil contract may among Christians constitute a true marriage, and it is false either that the marriage contract between Christians must always be a sacrament, or that the contract is null if the sacrament be excluded.' Syll. Prop. 73. [17] Trid. l.c. Can. 12.

[18] Prop. 58, Denzinger, l.c. p. 408, n. 1421.

§ 12.

But the real question concerns the destruction of the Christian character of marriage and of the family, for these as well as the State are threatened with profanation. The following is one of the gravest errors that has been asserted, that the family derives *the whole reason* of its existence solely from civil law. Therefore the civil law has to decide all questions concerning marriage, the rights of parents, instruction, and education.[1] The foundation for this position is thoroughly false, for domestic society, the family, existed before civil society, the State, and therefore has natural right independent of the latter and given to it by the Creator Himself.[2] Maternal love is so purely natural that it is found amongst savages and animals; family ties are ties of blood, purely natural ties. The family is ordained by the natural law, and therefore it is impossible that 'the whole reason of its existence' can be derived from the civil law. It is founded by marriage, by the inseparable life-partnership of two persons, undertaken with free consent from natural inclination; the State no more than the Church can supply deficiency :-

this free consent. Modern jurisprudence has committed many mistakes from not rightly understanding the law of nature,[3] and there has arisen one of the greatest errors, namely, that the civil power is boundless and unrestrained by any natural law. This was condemned in propositions 56 and 39 of the Syllabus.[4] In truth the civil power does not really extend further than is required for political and civil life, for the protection of law and the interests of society;[5] a supreme right which extends further than the end for which the State exists is inconceivable and absurd.[6] The State has to protect the natural rights of the family as well as of individuals; no civil law can abolish them: as it is impossible that the State can undertake the functions of domestic society, its interference must only be one of completion, and it must consider the family as a foundation of its own life.[7] But the theory which makes the family of no account is also perverted and dangerous in its conclusions. It endangers individual liberty, leads to the profanation of marriage, to the destruction of the family spirit, this 'second soul of mankind,'[8] to contempt of the parental authority, parental duties, and domestic discipline, which Christianity has struggled hard to establish.[9] Parental rights are founded on duties, and are therefore unalienable natural rights; the child belongs first to the parents, then to the State, and with the parents rests primarily the duty of its education. The dreams of Rousseau and of the Socialists, with all their disastrous consequences, are based on a false theory as to the family. An enormous abuse of State power[10] in this matter, nay, a whole series of such abuses, has grown up in most countries.

[1] Enc. of Dec. 8, 1864, § Et quoniam.

[2] Aristot. Polit. l. i. § 4, p. 482, ed. Paris, 1848. L. Taparelli, Corso elementare di natural Diritto, Napoli, 1853, ed. iv. l. iii. c. ii. p. 134 seq. p. 151, n. 157.

[3] The Church has always upheld it. It was taught in Rome under Gregory XVI., whilst Ferdinand II. of Naples would not allow it to be propounded in the colleges of his kingdom.

[4] 'Moral laws do not stand in need of the divine sanction, and there is no necessity that human laws should be conformable to the law of nature, and receive their sanction from God.' Syll. Prop. 56. 'The State is the origin and source of all rights, and possesses rights which are not circumscribed by any limits.' Syll. Prop. 39.

[5] Dahlmann, Politik, § 11. Bischof, Staatslehre, Giessen, 1860, p. 36.

[6] Davies, Instit. Jurisprud. Univ. § 786.

[7] Waitz, Grundlage der Politik, p. 6.

[8] Lamartine, Voyage en Orient, i. p. 36.

[9] Balmes, Katholicism und Protest. i. cap. xxiv. seq.

[10] Even Prof. Gneist has acknowledged, May 16, 1872 (Bericht der Reichstagverhandlungen, p. 422), as much as this, that the pages of history are full *of the abuse of State power*. But whilst he desires to have the 'abuse of ecclesiastical power' corrected by the State, he does not inform us who is to correct the abuse of State power.

§ 13.

It has been concluded from the condemned prop. 57 that a civil law which comes into collision with any canon not formally abolished is not to be obeyed; that consequently the doctrines of the Church are incompatible with modern constitutions and with the oaths of allegiance towards them.[1] The proposition runs as follows: 'Knowledge of philosophical things and of morals and also civil laws may and must be at variance with divine and ecclesiastical authority.' This proposition can be divided into two parts, one of which refers to philosophy and especially to ethics, the other to civil laws. It is in close connection with the previous one (56), and both are derived from the same source. In the Allocution of June 9, 1862, those were condemned who maintained that moral laws do not need divine sanction, that there is no necessity that human laws should conform to the law of nature or receive their force from God,[2] and that therefore there is no divine law—a doctrine contradicting sound philosophy, which has always demanded a divine sanction for laws, traced all binding force to God, and recognised certain first principles of reason as the foundation of all legislation. The Allocution has also declared itself opposed to the assertion that moral philosophy as well as civil legislation may and must be at variance with (declinare) divine revelation and ecclesiastical authority. We have before seen that the duty of conforming to divine revelation and ecclesiastical authority is primarily a negative one for the civil legislation; the civil power must forbid nothing that is commanded by God

and the Church, nor command anything forbidden by God and the Church, whereby all *liberty of conscience* would be destroyed; but beyond this it can leave unpunished actions that are forbidden by moral law and the commands of the Church.[3] Merkle says well:[4] 'According to the principles of the Church, objective right is superior to every legislator, whether spiritual or civil. He is bound by it, and by objective duties which are not self-imposed. Therefore it is incumbent upon him not to command anything contrary to the law of God. A human law which is opposed to the positive divine law can by no means be a mediate divine law, because God cannot contradict Himself. It can only be the expression of a creature's will, which of itself cannot bind the conscience; for all human laws derive their binding power from God. . . . St. Jerome says, What the Lord God forbids no human lord can command; such a command would be (according to St. Augustine) a corruptio legis, and could (according to St. Thomas) in no right sense of the word be called a law. The Church maintains that no human legislator has a right to command what is wrong; and by this doctrine in the interests of true liberty opposes State absolutism, the principle of tyranny. But still she is very far from teaching that the State is obliged to punish *all* transgressions of moral law. Catholic theologians are unanimous in saying that the State can only forbid such transgressions of the moral law which it considers injurious to the commonweal. . . . The State, therefore, according to the principles of the Church, may not command any transgression of moral laws, but may leave many such transgressions unpunished. Things contrary to moral law are wicked; but the human law, which in good faith tolerates this or that transgression of the moral law, is not wicked.' The question in prop. 57, according to the context, concerns the connection between laws and morality; there is no censure of the teaching of St. Thomas in this. This proposition has also two other parts; 'they may be at variance' is very different from 'they must be at variance.' *To make it a duty* that State legislation should be at variance with divine and ecclesiastical authority is an absurdity, because it implies

an immorality, withdraws firm ground from the State, and abandons it entirely to human discretion. A State which considered that to be its duty would at the same time destroy its own moral foundation. That 'it must be at variance' deserves to be censured as an impious and blasphemous doctrine. If 'it may be at variance' means that human laws have a right to set themselves in direct contradiction to divine revelation and to the authority of the Church, it deserves higher censure than if it means that these laws may ignore revelation and the Church. In the latter case we must moreover consider whether the State be Christian or heathen. But it is a mere *falsification* instead of the words 'divine revelation and the authority of the Church' to substitute these: 'any canon not formally abolished,' which could apply to any decree from Gratian's collection, in reality quite open to free criticism.

[1] Schulte, i. p. 45.
[2] Recueil des Allocutions, &c. p. 457.
[3] S. Thom. Sum. 1, 2, q. 1, art. 4, in corp.; q. 96, art. 2.
[4] Merkle, Die Toleranz, p. 8.

§ 14.

Objections are also raised to the condemnation of prop. 62, 'that the principle of non-intervention ought to be proclaimed and adhered to.' It is said that this condemnation rejects the fundamental principle of the law of nations, namely, the liberty and independence of every State. But it does not in fact touch this liberty and independence. The Pope does not dispute that, as a rule, one State has no right to interfere in the internal affairs of another; and Pius IX. as well as Gregory XVI. had on several occasions from 1831 to 1867 to complain of the unauthorised interference of foreign powers in the government of the States of the Church. But the modern principle of non-intervention is widely different from this; it does not merely forbid an unauthorised intervention undertaken against the lawful wish of the rightful reigning prince in a foreign country, under the pretext of establishing greater order, &c., but it also forbids any assistance to be given even against unjust aggression; in its present form it includes an immoral principle

which strikes at the root of international law, destroys brotherly love between nations, rends asunder the natural ties of humanity, exposes princes and people to every kind of violence, and sanctions robbery and the right of the stronger. Even setting aside positive treaties, intervention is justifiable when a State sees its own rights threatened or fears evil consequences from the proceedings of another State; or when anarchy and interior demoralisation have reached such a pass that morality requires interference from another State to save the afflicted member of the commonwealth of nations; and this may also be justifiable on the ground of self-preservation, to prevent or oppose the injurious intervention of another power.[1] But since no exception is allowed by the principle of non-intervention, those rights which nature and justice require to be based on common support are unable to obtain it and rendered unavailing, whilst lawless deeds meet with impunity, as assistance is denied to the oppressed. Fraught with harm and danger to legitimate governments, who may well think of the maxim, 'to-day to me, to-morrow to thee,' this principle of non-intervention has been applied by its representatives, especially by Napoleon III., in a manner which plainly shows that it can be meted out unequally according to circumstances. France might intervene in the Crimea, in Syria, in Cochin China, in Mexico, and above all in Italy; but for the Father of Christendom, who is no *foreign power* to Catholic nations, his sons might not intervene, unless it were advantageous to their government and for its private interests. By this new principle revolution has won an immense advantage. If it had been generally known and respected in 1848 and 1849, Hecker and his friends need have had no fear lest an army from a foreign State, led by a prince not yet approved by the Liberals of the day, should restore the grand-ducal dynasty of Baden and end the 'glorious' revolution.[2] But nowadays there are no principles, only the masks of principles, which can be taken on and off to suit the convenience of the moment.

[1] Walter, Naturrecht und Politik, § 466, pp. 453, 454, with the addition, that after the danger is passed interference must cease, and it must

not pretend to any profit. Even Rotteck and Berner were obliged to allow some exceptions.

[2] Hecker was the leader of the Baden revolutionists, who were crushed by Prussian intervention under Prince William, now the King of Prussia. [Tr.]

§ 15.

What, then, did the Pope mean in condemning prop. 62 of the Syllabus? The Allocution of September 28, 1860, from which it was taken, gives a complete explanation. It says: 'We cannot help deploring amongst other things this grievous and pernicious principle called the principle of non-intervention, which has lately been proclaimed and put in practice by certain governments and tolerated by others, even in the case of *unjust aggression* on the part of one government against another, so as apparently to assure impunity and license contrary to all laws, both human and divine, for the attacks and spoliation of the rights, properties, and dominions of others, as we have been witness in these unhappy times. And indeed it is astonishing that *the Piedmontese government alone should be permitted with impunity* to despise and violate such a principle; for in the face of all Europe we have seen it force its way with a hostile army into other States and expel the rightful princes; so that the absurd and disastrous conclusion is to be drawn, that foreign intervention is only allowable when intended to provoke and nourish revolution.'

The Pope then warns princes to consider well the consequences of such a principle. 'Here there is in question a gigantic wrong, an act of violence accomplished in an iniquitous manner against the universal law of nations; if not repaired no right will in future be any longer secure. It is the principle of rebellion which is shamelessly served by the Piedmontese government, and from which, as is easy to perceive, a continual danger is menacing all governments, and ruin is threatened to civil society; for by this means the way is opened to *Communism*. It is question of the solemn treaties, according to which the integrity of the States of the Church as well as of the other European States is to be preserved inviolate. It is

question of the violent seizure of that princedom which by a special decree of Divine Providence has been given to the Roman Pontiff, in order to enable him to exercise his apostolic ministry with perfect freedom over the whole Church. All princes ought therefore to be convinced that our interest is the same as theirs, and that in giving us their assistance they are providing for their own rights as well as for ours.'

Wide as the poles asunder are these two things, assistance rendered to a weaker State with its own consent, and an unjust invasion of the territory of a weaker power in order to crush it. The censured assertion, that it is not permitted to one government to give assistance to another when unjustly attacked, would shake the security of States, and render impossible every offensive and defensive alliance, and even every international union. Carried into private life, it would altogether annul the command of loving our neighbour. Christian morality requires that every one should help his neighbour to the utmost in case of need: and the rule of morality for nations is the same as for individuals. To proclaim the universal principle of non-intervention is to extirpate the last remains of Christian international law, and to inflict a greater calamity on mankind than even those ill-advised and ill-conducted interventions between 1820 and 1850.

§ 16.

It might have been expected that rulers of modern States would at least have welcomed the condemnation of prop. 63, and have been thereby in some degree reconciled to the Syllabus. This proposition declares that it is allowable to refuse obedience to legitimate princes, even to rebel against them. But instead of being welcomed, the condemnation of this proposition has been held idle, on the ground that 'whether a prince is legitimate or no rests, according to Boniface VIII., on the Pope's decision alone; so that if the Pope, on account of some violation of Church law, declares a prince to be unlawful, the condemnation of prop. 63 does not make it contrary to Catholic faith that subjects are bound to no obedience, but may rebel.'[2]

But we have seen already that the Holy See by no means attributes to itself exclusive judgment on the subject of the rightfulness of princes, but rather negotiates and treats with existing governments; and also we have seen that the suppositions just quoted are entirely false.[2] Pius IX. in the Encyclical of Nov. 9, 1846, in the Allocution of Oct. 4, 1847, and in the Briefs of Dec. 8, 1849, and March 26, 1860, has expressly quoted the following passages of Scripture, Rom. xiii. 1 seq., 1 Peter ii. 13 seq.[3] Nevertheless the objection has been raised that the Pope has made an exception to these decrees, viz. in the case of anything being commanded contrary to the law of God and of the Church. But although in this case, according to Pius IX. and the whole teaching of the Church, subjects are released from the duty of obedience,[4] they are by no means authorised to make *active* resistance, and still less is rebellion either sanctioned or enforced. *Passive* resistance is sufficient. Rebellion is entirely forbidden. Therefore it was never a matter of faith that the Church had *been invested with any divine authority* to depose princes. This authority she only exercised at a certain period and under special circumstances. The real meaning of prop. 63 is more fully exemplified by the following (64): 'The violation of a solemn oath, nay, any wicked and flagitious action repugnant to the eternal law, is not only not blamable, but quite lawful and worthy of the highest praise when done for the love of one's country.' This proposition is taken from the Allocution of April 20, 1849, given at Gaeta against the Italian and particularly the Roman revolution; it especially condemns the fact of palliating the violation of the sacred oath of allegiance rendered to rightful sovereigns under the pretext of patriotism. Why is this proposition passed over in complete silence?

[1] Berchtold, pp. 31, 32.

[2] Suprà, Essay i. pt. iii. § 3 seq. p. 59 seq.

[3] Vide Recueil des Allocutions, &c. pp. 184, 196, 250, 402.

[4] How often we are obliged to repeat the simplest truths! The civil power has no right to command anything contrary to the law of God and of religion. By doing so it would violate liberty of conscience; reject Scripture (Acts iv. 19; v. 29) and universal tradition (Martyr. S. Ignatii, n. 1, Ep. Eccl. Smyrn. de Morte S. Polyc.; Acta Mart. S. Just. n. 1; Acta

SS. MM. Epimachil et Alex.; Acta Symphor. et Scill. Cf. Ruinart, Acta Martyr. sincera, pp. 14, 35, 49, 64, 69, 74 seq. Justin. Apol. i. n. 17, 68. Iren. v. xxiv. 2. Theophil. ad Ant. iii. 30. Athenag. Leg. n. 1. Clem. Strom. iv. p. 505, ed. Paris, 1641. Tertull. Apol. c. ii. 28, 30, 32 seq. Orig. c. Cels. VIII. 65. Minuc. Felix in Octavio, c. xxxvii. Arnob. l. ii. c. Gent. p. 44 seq. ed. 1651. Lactant. Inst. iv. 8, 10). With regard to faith, sacraments, worship, and religious life, the civil power has no authority, for it only has authority within its own sphere.

§ 17.

Revolutionary principles have been most distinctly condemned by Pius IX. for the good of the State. Thus, for instance, 'The will of the people' (which, according to art. 3 of the declaration of the 'rights of man' in 1789, is the only sovereign) 'constitutes a supreme law, independent of all divine and human right, whether it be acknowledged by so-called public opinion or by other means.'[1] How much have monarchies already suffered from this phantom of the sovereignty of the people! How greatly have nations been deceived by it! Does not the Pope deserve all thanks from governments in having decidedly opposed this error?—as, for example, in the censure of prop. 60: 'Authority is nothing but the result of numerical superiority and material force,'[2] which so entirely corresponds to Rousseau's teaching, that sovereignty is not a power derived from God, but only arises from the sum of the personal rights of the separate parties to the social contract. The same may be said of the proposition: 'In politics accomplished facts merely from being accomplished have the force of law.'[3] Such a political science is not merely irreligious but immoral; it is unprincipled, and therefore senseless, totally subversive of the State and fatal to society when applied, as no power can at last prevent, to the private life of individuals. With it the following assertions are closely connected: 'Right consists in material fact; all human duties are vain words, and all human acts have the force of right.[4] An unjust act being successful inflicts no injury upon the sanctity of right.'[5]

[1] Encycl. Quanta cura, § Et quoniam: 'Voluntatem populi, publica, quam dicunt, opinione vel alia ratione manifestatam constituere supremam legem ab omni divino humanoque jure solutam.'

[2] Syll. Prop. 60. Several translations have taken 'numeri' to be nominative plural, whilst really it is genitive singular. For the Allocution of June 9, 1862, to which this belongs, has: 'Auctoritatem nihil aliud esse, nisi numeri et materialium virium summam.'

[3] Enc. Quanta cura, l.c.

[4] Syll. Prop. 59. Alloc. Maxima quidem, 9 June 1862.

[5] Syll. Prop. 61. Alloc. Jamdudum, 18 Mar. 1861.

§ 18.

A society governed by such principles as these acknowledges nothing but material power, and makes the accumulation and increase of riches and the enjoyment of sensual pleasures the object of all moral teaching and excellence.[1] When all the ties of religion are cast off, self-seeking and the search for riches and pleasures become the sole aim of individuals and of the mass. The social condition is to mankind not an end, but a means; for otherwise man, ethically considered, would not be a person, but only a thing, existing merely for the use of others. Man has a natural tendency to society, because he finds in it for himself and others protection and assistance; it assures to him the free exercise of his rights and the completion of his being. But civil society began on the earth, and does not extend beyond it, whilst man himself is immortal. If society is to fulfil its whole duty towards man it must treat him as a being with an eternal destiny; to do this it needs religion, both to show him this higher destiny and to give him the means of attaining it. But if society does not treat man as an immortal being, merely looking upon him as bound to it and with no destiny beyond the earth, it cannot prevent him from pusuing temporal possessions, riches, and pleasures as his highest good, and from endeavouring at all costs to possess them. The immaterial goods of earthly nature do not suffice, they are not equally accessible to all, and not satisfying in themselves; from this point of view virtue itself would be only a means of enjoyment, and would therefore only have a relative and not an absolute value.[2] When earth is substituted for heaven the fruits and treasures of earth become the highest aims of life, and every means is justified which enables them most completely to be enjoyed; so much attention is paid to

the animal part of man that intellectual interests naturally grow weaker. Political economy stript of all morality must be fatal to philosophy, and an unrestrained egotism must bring about the war of all against all—an unfathomable abyss of misery and ruin.

[1] Syll. Prop. 58. Alloc. of June 9, 1862. Enc. of Aug. 10, 1863.
[2] Liberatore, l.c. c. ii. a. 6, § 2, p. 190 seq.

§ 19.

Proposition 80 of the Syllabus,[1] which has been so much questioned, is by no means to be understood as condemning all modern progress. It is true that it condemns the church-hating Liberalism of modern times, which was described in the Allocution 'Jamdudum' of March 18, 1861, from which the proposition is derived, as a system specially formed to weaken and, as far as possible, destroy the Church of Christ. Huber pretends that in this Allocution the Pope entirely rejects the demand that he should reconcile himself to modern civilisation, because it favours forms of worship not Catholic, opens public offices to those outside the Church and Catholic schools to their children. But it must be remembered—(1) that the Pope's words refer to Italy, a Catholic country, and civilisation as there understood; (2) that those were *not the sole, not even the principal* reasons of the Pope's rejection of the demand; indeed the favour shown to non-Catholics was only mentioned *in contrast with the ill-treatment of the Catholic institutions.*[2] Pius IX. expressly condemns the acts of violence practised in Italy against the Church under the name of progress and civilisation,[3] and also expressly declares that true civilisation has ever found a protector and guardian in the Holy See. He distinguishes this true civilisation from the system which under false names strives to extirpate the Church, and to which it is impossible that the Apostolic See can ever be reconciled; for according to the words of the Apostle (2 Cor. vi. 14, 15), light and darkness, Christ and Belial can never agree together. The Syllabus has protected true Christian civilisation, which shrinks from seeing the Church despoiled and maltreated,

and recoils from materialism and communism. Only prejudice and heretical malice can treat it as a satire on human development. With forms of government and modern constitutionalism it is as little concerned as with modern inventions, railways, telegraphs, &c. As our opponents declare that the *Civiltà Cattolica* is the best exponent of Papal doctrines and decisions, it may not be out of place to quote a passage from this journal. In speaking of prop. 80 it says :[4] 'It is not to be imagined that when the Pope condemned Liberalism he also condemned so-called political liberty or the forms of free government. The Encyclical makes no mention of these; nevertheless there are some who, either from ignorance or malice, endeavour to maintain the contrary. But to dissipate the delusion of the former and the deceit of the latter, it is only necessary to mention that the doctrine of the Church is unalterable. She has ever taught that every legitimate and just form of government is good and acceptable; in themselves forms of government are neither good nor bad; they are useful or dangerous according to the principles by which they are animated, the persons by whom they are administered, and the dispositions of the people to whom they apply. In the Middle Ages the Church was constantly struggling and ever in arms against imperial absolutism, and continually defending the liberty of Italian communities; because, while the former endeavoured to appropriate foreign possessions and rose up against the Church, the latter were defending their own rights and were obedient to her. The words of Pius IX. do not refer to representative constitutions, but to the errors *which under every form of government* may manifest themselves, and which in our day have spread so terribly. His principles are precisely those which his predecessors have always taught; his merit is simply in having developed and collected these principles, and in having maintained them with unconquerable resolution during the whole of his long pontificate against his numerous and insolent assailants. It was impossible that Pius IX. could include civil and political liberty in his condemnation of Liberalism, and so far was it from being his intention, that at the very time of the publication of the Encyclical 'Qui pluribus,'[5] which is only further

developed and explained by the Encyclical 'Quanta cura' and the Syllabus, he introduced those administrative reforms[6] into his States which have caused him to be blamed for liberal tendencies by ignorant critics.'

[1] 'The Roman Pontiff can and ought to reconcile himself to, and agree with, progress, Liberalism, and modern civilisation.' Syll. Prop. 80.

[2] '*Dum* cuique acatholico cultui favet .... irascitur adversus religiosas familias,' &c.

[3] 'Count Cavour himself acknowledged the immorality of the proceedings in New Italy when he said: 'Were we to act for *ourselves* as we act for *Italy*, we should be great fools' (gran balossi). To which Massimo d'Azeglio remarked: 'The doctrine of a double morality, one for public, one for private use, is justly contested; but let that take its course' (Diario Politico-Militare dell' Ammiraglio C. Persano, Torino, 1871, p. 125).

[4] Civiltà Cattolica, ser. viii. vol. ii. quad. 504 (June 17, 1871), Pio IX. e la Società Civile, pp. 692, 693.

[5] Encyclical of Nov. 9, 1846, Acta Pii IX. vol. i. Romae, 1854, pp. 4-24).

[6] Atti del Sommo Pontefice Pio IX. parte ii. vol. i. Roma, 1857, pp. 4, 7 seq. 26 seq. 52, 123, 150, 191, 222.

§ 20.

The reply may be made that in another place[1] this same journal says, that in this same proposition Liberalism has been condemned absolutely and without reserve. It is perfectly correct that under this name a system most contrary to the teaching of the Church has been condemned, a system which supports itself on material progress and modern constitutions, and endeavours to imbue and leaven them with its spirit; but it is equally true and correct that material progress and modern constitutions are *not in themselves identical* with this system, or *that they coincide with it*. The Syllabus only refers to that system which violently combats the Church in every sphere, and endeavours at every turn to impede her salutary power; and this is clearly shown by the context of the Encyclical published at the same time. Therefore Huber's observation, that there is no interpretation of the words of the decree that will allow the Syllabus to be compatible with the *life of the State according to modern views*, is partly false and partly equivocal. Huber

confuses the administration of the constitution by means of a dominant liberal party with the constitution itself. Dr. Strode and Dr. K.[2] have satisfactorily shown how very often the former is in contradiction with the latter. The condemnation is a necessary protest of the Church against that which excludes religion from public as well as domestic society, from schools and from daily life, planes the way for socialism and communism, undermines Christian morality, and endeavours to enthrone the principles of the old Jacobins and of the Paris Commune of 1871. The successor of St. Peter had not this or that particular country, this or that individual in his mind, but with one glance, with one act he comprehended the ruin which threatened the Church and humanity, and recognised it by the light of reason illuminated by revelation, and weighing well all consequences. Bold unbelief cries, 'Away with Christ! we have no need of redemption; away with God![3] we help ourselves.' More refined unbelief says the same, but in a more refined manner: 'We allow all honour to be shown to God and to the Saviour, so that it is in the quiet of a chamber or within the walls of a church; but in the world, in civil life, there we have no need of God or of Christ.[4] There we are the gods;[5] there our money, our science, our wills govern. Behold, Israel, the gods which have delivered you out of Egypt: modern industry, material progress, natural science, the science of history, a free press, and above all, that which alone governs all and alone can insure your happiness, the modern liberal State. The Church may vegetate in a hidden corner. The forum, the senate house, the schools, and in consequence the future, belong to us alone!'

[1] Reply to P. A. Cicuto, ser. viii. vol. iv. quad. 511, of Oct. 7, 1871, p. 74.

[2] Der Conflict Zwischen Staat und Kirche in Bayern.

[3] These words, which were let fall at a dinner of the Paris Commune, are very characteristic: 'If God existed, He would have to be shot' (Allgemeine Zeitung, June 8, 1871, from the Siècle).

[4] In the Encyclical Quanta cura the censure of the endeavours made to do away with the keeping holy of Sundays and holydays, and to limit works of Christian charity, was aimed at this notion.

[5] Erasmus of Rotterdam, Expl. in S. Script. p. 65: 'Quidquid homo praefert Deo, id sibi facit Deum.'

§ 21.

Hostile efforts to banish religion from social life, and to act as if there were no divine revelation, result in the withdrawal of the *supernatural* means of grace from humanity. Humanity is thus reduced to a state of simple nature and abandoned to itself; wherefore the Holy Father calls this tendency naturalism. But in this state we have only unredeemed humanity, tainted with original sin, without bit or bridle, yielding to every inclination and to every crime, the mind becoming dark, and the heart hardening, as they did in the heathen world with its false gods, its external cultivation, its ever-increasing moral deterioration. The sons of earth, lately driven out of Paradise, their reason darkened through want of heavenly light, perverted and distorted the simplest ideas, even the truths of nature; it is no marvel, therefore, that the notion of true justice and man's true rights should not only have been obscured but lost, and that *brute force* should take the place of true justice and righteous law.[1] If the original source of all rights is denied, every particular right can only have a doubtful existence from one day to another; the protecting dams are broken away, the floodgates are opened, and in pours the terrible devastating torrent of universal overthrow, the new deluge of literary, religious, political, and social revolution. An immeasurable tract is exposed to intellectual desolation, to horrible convulsions, to terrible barbarity. And society must take all the blame, because it yielded in the beginning, and agreed to the premises from which these consequences have inexorably and inevitably ensued. It has itself prepared the ruin by not only enduring but fostering, cherishing, and favouring these principles.[2] It will not acknowledge the means of salvation so near at hand. 'The fundamental law of progress, civilisation, and liberty is the Gospel, that is, our Saviour Himself. He has given to the world the highest and purest ideal and the noblest meaning of these three things when, as a foundation for all His teaching, He bids us: "Be you therefore perfect, as also your Heavenly Father is perfect."'[3] Those religious truths, ignored by the world and repeatedly proclaimed

by Pius IX., alone secure true progress, true civilisation, true liberty; they show how Creator and creature, spirit and matter, reason and faith, nature and grace, the external and internal world, body and soul, Church and State, Christian and citizen, should neither be confounded, thrown together and identified, nor separated, absolutely divided, and placed in opposition to each other; revealed truth alone shows the true harmony that exists in all things, and brings our intellect and life into wonderful unison; moreover whenever such a harmony does not exist between eternal principles and deeds of momentary importance and human commands, between justice and law, these truths of revelation show us how to reconcile them, and prepare the way for further development. We learn to understand our own incompleteness, shortcomings, and imperfections, and to console ourselves with the thought that 'we have not here a lasting city, but we seek one that is to come' (Heb. xiii. 14), where there will be no more weeping, pain, or death, and where the Lamb will be the light (Apoc. xxi. 4, 23), and with the thought that there must be a difference between the ideal world and the real world of earth. But the faithful must be on their guard against accepting imperfect human rules, whose authority is simply based on physical power, as supreme and final, to which everything must submit, and by which even religious truths are to be tested. That would be a return to the barbarity of paganism, the deadly enemy of Christianity, eager to thrust the Church back into the catacombs, and to increase the burden of our corruption, already so heavy, and by which we lose so many blessings of Christianity; for men seek to confine Christian influence within the walls of the churches, to sever it entirely from public life, and to make everything independent of religious principles and rules.[1]

[1] Pius IX. Enc. Quanta cura, § Et quoniam: 'Ubi a civili societate fuit amota religio ac repudiata divinae revelationis doctrina et auctoritas, vel ipsa germana justitiae humanique juris notio tenebris obscuratur et amittitur, atque in verae justitiae legimitique juris locum *materialis* substituitur *vis*.'

[2] I wrote thus in 1865 (Chilianeum, vol. vi. pp. 295, 296): I can now repeat it even more strongly. Noe's warning was without effect upon

corrupted men; the words of Pius IX. have met with the same fate from most of his contemporaries, who hurry blindfold to the abyss they will not see.

[3] Dupanloup, Die Convention v. 15 Sept. und die Encyclica v. 8 Dec. 1861, ii. Th. § 5.

[4] 'As if,' says Tosi (Vorles. über den Syllabus Errorum, p. 4), 'mankind had to strive after two totally distinct aims; as if our supernatural destiny did not include and transform the natural elements of our development; and as if every form of life, whether of individuals or of the mass, ought not to be pervaded and purified by the spirit of Christianity.'

§ 22.

The following is an example of the false suppositions under which this discussion is carried on: Berchtold says: 'We are certainly completely justified in basing our argument concerning the irreconcilable contradiction between the new Papal dogmas and the Bavarian State laws on the supposition that the Bulls 'Unam sanctam,' 'Cum ex Apostolatus,' &c., and in particular the propositions of the Syllabus are *matters of faith* in the new Catholic Church.'[1] But the Bull 'Cum ex Apostolatus,' as well as many others, contains no matter of faith. The Bull 'Unam sanctam' has only defined one proposition to be an article of faith. The Syllabus is only a dogmatic judgment in a wide sense; moreover most of its propositions are misinterpreted, distorted, and never understood in their proper connection. Hence further arguments based on this supposition rest on a false foundation; they do not rise above the level of empty declamation, which repeats and repeats, but never proves. The Syllabus rightly understood is only a serious warning against the advancing decay and ruin of religious life and thought;[2] also against the utter misconception of the object, signification, and nature of the Catholic Church, regarded nowadays as the ignorant regard without comprehending her old cathedrals and painted windows:

> 'Peep into the church from the market outside,
> And is anything else but gloom there—say?
> Our friend the Philistine peeps this way,
> And rightly enough he sniffs with pride,
> And sneers at the church till his dying day,
> But, ah—let him venture but once inside!'[3]—*Goethe.*

[1] Berchtold, p. 15. Cf. p. 24 seq.

[2] Tosi, l.c.: 'Error is very liable to produce a spiritual miasma, a poisoned atmosphere, in which even the most healthy sicken, and *the doctors* themselves are at last attacked by the evil. Thus has the *process of secularisation* spread itself abroad; and some persons who, in consequence of their talents or position, have been chosen to represent the intelligence of the Church, have not been able entirely to divest themselves of this fatal influence. To prevent us all from falling victims to this contagion, the venerable old man who at the present time is governing the Christian community is *obliged* to raise his voice, in order, by the lightning of God's Word, to dispel the deceitful twilight of modern ideas. Praise and thanks be to the successor of the Apostle-princes; he has spoken the word, and put an end to the fluctuations of opinion.'

[3] 'Sieht man vom Markt in die Kirche herein,
Da ist Alles dunkel und duster;
Und so sieht's auch der Herr Philister.
Der mag denn wohl verdriesslich sein
Und lebenslang verdriesslich bleiben
Kommt aber nur einmal herein!'

ESSAY VI.

FUNDAMENTAL PRINCIPLES OF THE MIDDLE AGES.

THE attacks of the enemies of the Church at the present day have mostly reference to her conduct in the Middle Ages, and in order thoroughly to reply to them we must closely examine the principles of those times, which differ fundamentally from the principles prevailing at the present day. How hard it is to many of our contemporaries to place themselves in the position to form a judgment on the relations of Church and State in the Middle Ages has been fully recognised and expressed by the clear-sighted John Frederick Böhmer,[1] and it is also shown by a glance at the opinions on the subject prevailing amongst us. 'It is almost incredible,' writes Karl von Thaler with great truth, 'how few educated men know more of history than is taught in school-books.'[2] Only a thorough knowledge of the state of society in that day, of the principles of law and justice, and of the manner, condition, and wants of the people, taken in connection with their ever-advancing development,—this knowledge alone can give us a right understanding of the immense influence gained and maintained through many hundred years by the Popes (and by Councils as well)[3] over sovereigns and States, an influence which we at the present day find it hard to understand. I will endeavour to portray the leading features—(1) of the influence of the Church on social and political life; (2) of the power of the Papacy; and (3) of excommunication and its consequences in the Middle Ages.

[1] J. Fred. Böhmer's Leben, Briefe und Kleinere Schriften, von J. Janssen, vol. i. p. 247 seq. Böhmer's Leben und Anshauungen, Freib. 1869, p. 278.

[2] Allgemeine Zeitung, Feb. 2, 1871.

[3] Vide infra, esp. part iii. § 14 seq.

Part I. Influence of the Church on Social and Political Life.

§ 1. The Church in the Germanic kingdoms. § 2. Elective and hereditary monarchies. § 3. Restriction of the royal power. § 4. The first duties of a king, those towards God. § 5. The oath of kings. § 6. Their coronation and anointing. § 7. Kinghood and knighthood. § 8. Power of the clergy, especially the bishops. § 9. State of society in that day. § 10. Close union between Church and State. § 11. Natural, divine, and positive law. § 12. Religion and freedom.

§ 1.

With the entrance of Christianity into the world began the action of a new force, which necessarily and rightly led to new relations of national life.[1] The kingdom of heaven thrown open by the Redeemer of the world was a grain of mustard-seed, which was to become a lofty tree; a handful of leaven which was to leaven all things (St. Matt. xiii. 31, 33; St. Luke xiii. 19, 21).[2] No one can deny that Christianity made a change for the better in the civil, political, and social life of the Roman Empire.[3] Its influence was, however, far greater with the German races, where there was no existing heathen civilisation to be purified, but where its work was to implant civilisation for the first time amongst a barbarous and savage people.[4] The Church was the mediator and peacemaker between the conquered Romans and the victorious Germans; she protected the one and educated and moulded the other.[5] She was the one source of culture, the one counterpoise to brute force, the one cultivated body throughout the whole human society.[6]

[1] Harless, Staat und Kirche, p. 2.
[2] Chrys. Hom. 46 al. 47, in Matth. n. 2. Migne, lviii. p. 178 seq.
[3] Bianchi, t. iii. c. iii. § 19, pp. 353-356. Phillips, Kirchenrecht, iii. § 118, p. 13 seq.
[4] Neander, Kirchengeschichte, ii. p. 49, iii. ed.
[5] Döllinger, Lehrbuch d. Kirchengeschichte, i. § 44, p. 217.
[6] Neander, l.c.

§ 2.

In most of the kingdoms raised upon the ruins of the Roman Empire in the West there was a combination of elective

and hereditary monarchy, so that while the king had to be chosen from among the members of the reigning family, the choice of the nation might fall on any of the princes of the blood royal; no individual prince had by birth full and indisputable right to the throne; the right was only conferred upon him by the assembly of the nation, and especially by the chief men among them. All the sons of the late king had an equal right of succession; and either, with the consent of the nation, a division of the kingdom was made, or the assembly of those privileged to vote made choice of some member of the reigning family to be head of the State.[1] This was the case especially in England,[2] with the Visigoths in Spain,[3] and with the Franks. Pipin made the Franks swear to him that they would never choose a king of any other blood, in order to give a great security to his dynasty.[4] In the deeds of division of Diedenhofen (Feb. 8, 806), by which Charlemagne divided his kingdom between his three sons, it was stipulated that in case one of them should die leaving a son, and this son were chosen by the people as successor to his father, his uncles should acknowledge him as such.[5]

[1] Guizot, Essais sur l'Histoire de France, essai iv. c. iii. pp. 219-223. Giesebrecht, Geschichte der Deutschen Kaiserheit, iii. dupl. i. p. 90.

[2] Hallam, Europe in the Middle Ages. Lingard, History of England. Ranke, Englische Geschichte, i. pp. 14, 30 seq. 34 seq. See especially Freeman, Norman Conquest, vol. i. c. iii.

[3] Hallam. Ferreras, Hist. d'Espagne, t. ii. p. 419. Perez Valiente, Apparat. Jur. Publ. Hispan. Matriti, 1751, t. ii. c. vi. vii. 21.

[4] Vertot, Dissert. sur la Succession à la Couronne de France (Mémoires de l'Académie des Inscriptions, 4, t. v.). Guizot, l.c. p. 218. Cf. Greg. Turon. l. ii. c. xii. Natal. Alex. H. E. saec. 5, p. ii. c. ult. a. 4, n. 5; saec. 7, c. vi. a. 4, n. 2; saec. 9, et 10, p. i. cap. vii. a. 4, 9.

[5] Pertz, Leg. t. i. p. 140.

§ 3.

In the Germanic kingdoms great regard was felt for the freedom and privileges of the individual,[1] while the authority of the sovereign was limited by the general assembly of the nation. It was commonly the case that the nation in choosing a prince laid on him certain conditions, and could hold him answerable for his conduct.[2] It was an understood condition that the king

must deal uprightly, govern well and justly, maintain peace and concord, and not misuse his power by oppression. The kingly power was never looked upon as absolute and unlimited; the rights of the people were quite as important as those of the prince, and he was put in mind of his duties, as they of theirs.[3] The people were not to exist for the benefit of the prince; and his power was to be employed, not for his own ends, but for the welfare of the nation.[4]

In the appendix to the Capitularies,[5] following the words of the Councils held in Paris (829) and at Aix (836),[6] it is said: 'Rex (king) is derived from recte agendo (dealing justly); he may truly be called king who acts piously, uprightly, and mercifully; the ruler who acts otherwise is a tyrant. The duty of a king is to rule his people with righteousness and justice, and to maintain peace and harmony.' The same was said by Pope Nicholas I., by Hincmar of Rheims, and by the Council of Mainz (888).[7] The following words were written by a French duchess to Count Theobald: 'The sovereign who declines from the path of just judgment deserves to lose his title, especially as God has appointed princes on earth, that after a just trial they may decide and pass judgment.'[8] Thus there was, if not an explicit, at least an implied, covenant between prince and people, such as is mentioned in Holy Scripture between David and the people of Israel (2 Kings v. 3). In a conference held November 7, 1405, Gerson opposed the error of those who maintained that a ruler has no obligations towards his subjects, and he even declared that these obligations once violated, he was no longer to be considered as ruler.[9] The conditions upon which a king was to be acknowledged were laid down beforehand, and when these were disregarded, his reign itself was to come to an end. Transactions often took place respecting the accession of this or that prince to the throne much resembling the 'capitulations,' that is, the conditions to which the German emperors even in later times had to swear, before being elected.

[3] Cf. Phillips, l.c. § 120, p. 66.

[4] Guizot, l.c. pp. 223-226. Lenglet-Dufresnoy, Méthode pour étudier l'Histoire, P. iv. c. v. a. 1, t. iv. p. 333.

[3] Walter, Kirchenrecht, book viii. § 343, p. 608, 11th ed.

[4] Vide Seneca, i. de Clem. c. xix.: 'Rempublicam non esse principis, sed principem reipublicae.' Aug. de Civ. Dei, l. v. c. xii.: 'Rex dicitur a regendo et consulendo, non a regnando atque imperando.'

[5] Capitul. Addit. t. i. p. 1146, ed. Baluz; Add. ii. n. 24, 25.

[6] Conc. Paris. vi. l. ii. c. i. Asquisgr. ii. Hefele, Conc. iv. 61 seq. 87.

[7] Nicol. I. Ep. 4, ad Advent. Meteus.: 'Videte, utrum reges isti et principes, quibus vos subjectos esse dicitis, veraciter reges et principes sint. Videte si primum bene *se* regunt, deinde subditum populum. . . . Videte si *jure* principantur; alioquin potius tyranni credendi sint, quam reges habendi,' &c. Hincmar, Opusc. de Divortio Lotharii (Opp. i. 693). Conc. Mogunt, 888, c. 2 (Hefele, iv. p. 527).

[8] Petr. Bles. Ep. 184, p. 476.

[9] Cf. Schwab Gerson, pp. 240 seq. 428.

§ 4.

In the mediæval States, as in those of antiquity,[1] religion was the foundation and mainstay of society, and the first and most important duty of princes was its care and defence. A ruler was to be, above all, the servant of God, the defender of the Church, of the weak, and of the needy.[2] In the words of Scripture he was the representative and servant of God for the people of God (1 Chron. xxviii. 5, xxix. 11, 23; Eccles. xvii. 14, 15; Rom. xiii. 4); bound to render strict account[3] (Wisd. vi. 2-11; Ezech. xxxiv. 10, 11); by justice alone could his throne be firmly established (Prov. xvi. 12; Ps. lxxi. 2 seq.). He who has not a truly religious mind, said Gerson (Jan. 6, 1391), cannot in truth be called a king; firm trust in God is the highest praise bestowed in Scripture upon a prince.[4] The words of Leo the Great, 'to reign is to serve God,' were in use throughout the Middle Ages;[5] likewise those of St. Augustine, 'The wicked man is a slave, even though he be a ruler; and this not to a single individual, but to as many masters as he has vices.'[6] The first and most important duties of princes were those due to God and the Church, and in discharging them they were to set an example to all their subjects.[7]

[1] Aristot. Polit. vii. 8: Πρῶτον ἡ περὶ τῶν θείων ἐπιμέλεια. Plato, de Leg. l. x. Xenophon, Memor. Socr. i. Cicero, de Leg. ii. 6, 7, de Natura Deor. l. i.; de Finibus, l. iv. Plutarch, who calls religion συνεκτικὸν πάσης κοινωνίας καὶ νομοθεσίας ἔρεισμα. Valerius Maximus, l. i. c. i. de Rel., who

says: 'Omnia namque post religionem ponenda semper nostra civitas duxit etiam in quibus summae majestatis conspici decus voluit.' Cf. Hugo Grotius, de Jure Belli et Pacis, ii. 20, § 44, n. 3 seq.; Montesquieu, Esprit des Lois, iii. 9.

[2] Hieron. in Jerem. c. xxii. (Gratian, c. 23, c. xxiii. q. 5). Leg. Visigoth. l. xii. tit. 2, n. 2. Leg. Angl. (Cancianj, Barbarorum Leges, t. iv. pp. 185, 311, 337), Jur. Alaman. s. Suevici Specimen. n. 24 seq. Senkenburg, Corp. Jur. Germ. t. ii. p. 6 seq.

[3] Conc. Paris. vi. l. ii. c. ii.: 'Scire etiam debet (rex), quod causa, quam juxta ministerium sibi commissum administrat, non hominum, sed Dei causa existit, cui pro ministerio, quod suscepit, in examinis tremendi die rationem redditurus est;' c. v.: 'Nemo regum a progenitoribus regnum sibi administrari sed a Deo veraciter atque humiliter credere debet dari.'

[4] Schwab Gerson, p. 411 seq. Cf. p. 456 seq.

[5] Deo servire regnare est. Leo M. Petrus Bles. Ep. 20, p. 74, ed. Migne; Ep. 139, p. 413.

[6] Aug. de Civit. Dei, l. iv. c. iii.

[7] Anselm. Cantuar. l. iii. Ep. 132, ad Regem Scotiae; l. i. Ep. 142, ad Reg. Hibern. Petrus Bles. Ep. 67, p. 211: 'Rex cui omne judicium in populo datum est, quomodo judicabit populum suum in lege domini, si legem domini non cognovit?' In the Tract. quales sunt, P. iv. c. xii. p. 1048, he calls Christ, regum omnium potentissimus, qui vices et jura sua regibus suis exsequenda commisit. Petrus Vener. l. ii. Ep. 7, p. 197, ad Regem Norvegiae; Ep. 46, p. 269, ad Reg. Hieros.; l. iii. Ep. 3; l. iv. 37, pp. 180, 369, ad Roger. Reg. Sicil.; Ep. 36, p. 366, ad Reg. Franc.

§ 5.

In many States the monarch was elected only on the express condition of professing the Catholic faith, defending it with all his might against attack, and thus best insuring the peace and welfare of his land.

In Spain, from the seventh to the fourteenth century, the king had to take such an oath; when it was no longer formally taken, a Spanish king was still understood to be ever bound by this obligation; the title 'Catholic king' was a title of honour and of responsibility.[1] In the laws of Edward the Confessor, published by William the Conqueror and his successors, it was expressly said, that a king who did not fulfil his duties towards the Church was to forfeit his title of king; and that he was to be bound by oath to this before his coronation.[2] Even supposing these laws do not come down from Edward, still there can be no doubt that they put before us the views and principles of

justice which prevailed under the early Norman kings.[3] According to the purport of the words, a prince who was faithless in his religious duties not only deserved to forfeit his kingly title, but was in fact to forfeit it.[4]

[1] Perez Valiente, l.c. t. xi. c. vii. n. 18.

[2] Leges Edwardi Regis, art. 17, al. 15 (Wilkins, Leg. Anglo-Saxon. Lond. 1721): 'Rex autem, qui vicarius summi regis est, ad hoc est constitutus, ut regnum terrenum et populum Domini, et super omnia sanctam veneretur Ecclesiam ejus, et regat et ab injuriosis defendat et maleficos ab ea evellat et destruat, et penitus disperdat. Quod nisi fecerit, nec nomen regis in eo constabit, verum testante Papa Joanne nomen regis perdit.' Vide Cancian. l.c. p. 337. Howard (Traité sur les Coutumes Anglo-Normandes, Paris, 1776, t. i. p. 167) omits the last words, contrary to all former editions (Spelman, Concilia, Decreta, Leges, Const. Orbis Britan. Lond. 1639 seq. p. 622; Wilkins, Conc. Brit. Lond. 1737, i. 312; Hard. Conc. vi. 988), and gives no reason for the omission. Vide Gosselin, ii. p. 303, n. 1. It is not certain whether Pope John has been confounded with Pope Zacharias, or whether the passage refers to John VIII. in c. xxvi. Administratores, c. xxiii. q. 5—in which, however, the words are not so strong—or to a lost writing by a Pope of this name.

[3] Wilkins, Conc. M. Brit. i. 310. Canciani, l.c. p. 224.

[4] Cf. Receveur, Hist. de l'Eglise, t. v. p. 127.

§ 6.

The coronation of kings, which was in early times likened to the consecration of bishops,[1] brought home to the people the loftiness of the royal dignity, and to the king the weight of his responsibilities.[2] In the West, as in the East, where from the fifth century the emperor had been crowned by the Patriarch,[3] the profession of faith, and the oath taken by the king, that he would rule with justice, defend the Church, &c., formed a part of the coronation. In the Arles Pontificale, a rite of anointing is given, in which the prince to be anointed is presented to the metropolitan by two eminent bishops with a petition that he may be raised to the kingly dignity;[4] upon which the metropolitan, precisely as at a consecration, inquires into his worth and fitness, and having received a satisfactory answer, replies 'Deo gratias.' Before the anointing came the taking of the oath.[5] Most significant are the accompanying prayers and words.[6] Many were of opinion that kings received full power only at

their coronation and anointing by the Church. The language of documents is in keeping with this view; the twelfth Council of Toledo (681) says, from the deeds laid before it, it is clear that Prince Erwig had attained the dignity of king and received the royal power through the sacred anointing.[7] Charles the Bold, in his complaint against Archbishop Wenilo of Sens (859), laid stress on the fact that the archbishop had consecrated him and raised him to the throne.[8]

Although the king, either by election or by birth, might have a right to reign (jus ad rem), still, according to universal belief, his reign began (jus in re) through the anointing and blessing of the Church, or at the very least his power then received its solemn sanction.[9]

[1] Petrus Damiani, sermo 69, in Dedicatione Ecclesiae, t. ii. p. 374. Petrus Bles. Ep. 10, ad G. Capell. In the East, the Patriarch Polyeuktus, in a synodal decree of 969 (Bever. Pand. can. i. p. 385; Balsam. in c. xii. Ancyr.), even compares this anointing in its effects to baptism.

[2] Phillips, Kirchenrecht, iii. § 120, pp. 67, 68.

[3] Theod. lect. ii. 65. Theophan. p. 170, ed. Bonn. Le Quien, Or. Christ. i. 133, § 22.

[4] Pontificale M. S. Eccl. Arelat. ap. Martene, de Antiquis Eccl. Ritibus, t. iii. l. ii. c. x. p. 222: 'Reverende pater, postulat mater Ecclesia, ut praesentem militem ad dignitatem regalem sublevetis.'

[5] Martene, l.c. pp. 192-199. Cf. formula in Phillips, l.c. p. 72 seq., and that used at the coronation of Edward II. of England, Feb. 24, 1308, Rymer, iii. 63; also Lingard.

[6] Martene, l.c. pp. 203, 205, 214. Phillips, pp. 74-79. Walter, l.c. p. 608, n. 2.

[7] Aguirre, Conc. Hisp. ii. 683, c. i.: 'Regnandique per sacrosanctam unctionem susceperit potestatem.'

[8] Libell. Proclam. Hard. v. 488.

[9] Bianchi, t. ii. l. v. § 12, n. 8, p. 381 seq. against the Defensio Declarat. Cleri. Gall. P. i. l. ii. c. xliv. p. 269 seq. ed. Mogunt, 1788.

§ 7.

At the coronation of a king, the principle was expressly laid down that the temporal sword was to be borne for the honour of God. This applied more strictly indeed to kings, but also to the entire Germanic knighthood. As of old, in heathen times, weapons were laid on the altars of the gods and consecrated to sacred conflicts, in like manner the sword was delivered

to the Christian warrior by the hands of the Church, or at least with religious solemnity. In the case of warlike nations, the blessing of the sword by the Church was a means of drawing their whole lives within the domain of Christianity.[1] It was universally held that knighthood bound a man, above all, to the defence of the Church, the weak, and the needy. The truer knights are towards their sovereign, says John of Salisbury, so much the more zealously will they keep faith with God.[2] Faith must be kept first with God, then with princes and people; the higher ever comes before the lower; the commands of princes cannot be obeyed when contrary to the commands of God; and this the oath itself says.[3] All, without exception, belong to the Church, whether bound by an oath expressed in words, or by one taken in silence; a deed weighs as much as a word; if the future knight bring his sword solemnly to the altar, and there make an offering of it to God, he has done as much as abbots and bishops when they make their profession in writing before God. Much is granted them for the service of the Church, but nothing is granted to be used against her.[4] The chief duty of Christian knighthood was to do battle for the Church, and even when princes received the knightly stroke this duty was ever put before them; as was done in the case of William of Holland, who, after the speech of the Papal legate and the taking of the oath, was dubbed knight by the King of Bohemia with earnest words of admonition.[5] Often were kings reminded that the sword had been given to them for the defence of the Church,[6] and that they should imitate King David in their submission to God.[7]

[1] Phillips, § 121, p. 81 seq. Cf. Walter, Deutsche Rechtsgeschichte, p. i. § 219.

[2] Joh. Saresbur. Polycrat. l. vi. c. viii.: 'Sed ipsius juramenti (militaris) verba revolve, et invenies, armatam militiam non minus quam spiritualem *ex necessitate officii* ad religionem et Dei cultum arctari, *cum fideliter et secundum Deum* principi debeatur obsequium et reipublicae pervigil famulatus. Illi ergo quid habent militis, qui vocati ex sacramento non obtemperant legi, sed in eo militiae suae gloriam constare credunt, si contemptibile sit sacerdotium, si Ecclesiae vilescat auctoritas, si ita dilataverint regnum hominis, ut Christi imperium contrahatur, si laudes suas praedicent et se falsis ipsos praeconiis mulceant et extollant, cum irrisione

audientium imitantes "militem gloriosum"? . . . . Sed quid est usus militiae ordinatae? Tueri Ecclesiam, perfidiam impugnare, sacerdotium venerari, pauperum propulsare injurias, pacare provinciam, pro fratribus, ut sacramenti docet conceptio, fundere sanguinem et si opus est, animam ponere. . . . Haec agentes milites sancti sunt et in eo fideliores principi quo servant studiosius fidem Dei, et virtutis suae utilius gloriam promovent, quo fidelius Dei sui in omnibus gloriam quaerunt.' Cf. Anselm's words, in Möhler's Anselm of Canterbury (Gesammte Schriften, i. p. 99), and Alanus ab Insulis de Arte Praedicat. c. xl. (Migne, ccx. p. 786).

[3] Ib. c. ix. p. 601: 'Haec autem omni militiae formula praescribenda est et implenda, ut *Deo primum fides* debita *deinde principibus et reipublicae* servetur incolumis et semper majora praejudicabunt minoribus, quia nec reipublicae nec fides principi servanda est *contra Deum*, sicut habet ipsa conceptio militaris sacramenti.' So says St. Augustine in Psalm cxxiv. of the Christian soldiers under Julian: 'Milites Christiani servierunt imperatori infideli; ubi veniebatur ad causam Christi, non agnoscebant nisi eum, qui in coelo erat.'

[4] Ib. c. x. pp. 601, 602: 'Licet autem sint, qui sibi non teneri videntur Ecclesiae ex sacramento solemni, quia jam ex consuetudine plerumque non praestatur, nullus tamen est, qui sacramento tacito vel expresso Ecclesiae non teneatur obnoxius. Et forte ideo cessat solemnitas juramenti, quia ad hoc omnis invitat et coarctat necessitas officii et sinceritas fidei. Unde jam *inolevit consuetudo solemnis ut ea ipsa die, qua quisque militari cingulo decoratur, ecclesiam solemniter adeat gladioque super altare posito et oblato, quasi celebri professione facta, se ipsum obsequio altaris devoveat et gladii, i.e. officii sui, jugem Deo spondeat famulatum.* Neque necesse est, ut hoc profiteatur *verbo*, cum legitima professio militiae *facto* ejus videatur inserta. Quis enim in homine illiterato et qui magis arma debeat nosse quam literas, professionem exigat literarum? Nam episcopi et abbates professione scripta vel dicta ad fidem et obedientiam videntur arctari. Et revera arctantur, quia Deo mentiri non licet. Sane aut plus est aut non minus, quod milites faciunt, *qui non schedulam, sed gladium offerunt et quasi primitias officii redimunt ab altari*, unde Ecclesiae in perpetuum famulentur. Nam sicut eis *pro Ecclesia plurimum*, ita *contra Ecclesiam* licet *nihil*.' Cf. Petr. Bles. Ep. 94, p. 294.

[5] Magn. Chron. Belgic. ap. Pistor. Scr. Rer. Germ. iii. 266. Pertz, iv. 363. Phillips, l.c. p. 82 seq.

[6] Petrus Bles. Ep. 112, pp. 338, 339: 'Recolat . . . . rex, se non ad oppressionem pauperum, sed ad tuitionem Ecclesia potestatem gladii accepisse.'

[7] Petr. Bles. Tractatus quales sunt, P. iii. c. xix. p. 1036: 'Regem (imitentur) reges, ut quanto latiora sibi regna subduntur quanto de die in diem amplificantur, quanto plus eis honoris impenditur, humiliores efficiantur et gratias agant datori. *Datori* dico *non dictori;* datori, qui dedit, ut inde plus (se) humilient, non dictori, qui dicit, ut inde plus jactitent. . . . Qui facit, unde reges gaudeant, facit, unde reges contremiscant. Ipse namque est per quem reges regnant (Prov. viii. 15); ipse qui dat salutem regibus (Ps. cxliii. 10); ipse qui subdidit eis populos, est idem ipse, qui aufert spiritum principum, terribilis apud omnes reges terrae (Ps. lxxv.

13); ipse est qui facit ut potentes potentur tormentis patiantur (Sap. vi. 7) . . . . se ipsos sentiant esse *homines*, qui ab hominibus sentiuntur *reges*.'

§ 8.

This being the state of the case, the clergy naturally took an active part in all the weighty affairs of their country, and exercised a powerful influence,[1] to which their learning and intelligence, their wide possessions in land and their firmness of character greatly contributed. Bishops and, later, many abbots also obtained privileges of independence in the German empire. Kings often sought and obtained from them support against their turbulent nobles; mixed parliaments were formed (concilia mixta), synods and parliaments in one, composed of the lords spiritual and temporal.[2] In Spain the bishops, together with the chiefs of the nation, chose the king, who had, before ascending the throne, to promise by oath to fulfil all his obligations.[3] So also, according to the English Council of Calcut (787), kings were to be lawfully chosen by the bishops and chief men of the nation.[4] At Aix (842) the bishops required from the brothers of Lothair I. a vow that they would govern in a manner well-pleasing to God.[5] In the year 879, Count Bosco was chosen and crowned king by the lords spiritual and temporal of Provence;[6] and the same was done in other lands.[7] Bishops, being vassals holding directly from the king, had a share, if not always a personal share, in all his privileges and duties;[8] their moral weight and their material possessions secured to them a most prominent position. They filled the posts of chancellor and ambassador at the various courts, they were the most valued councillors of the sovereign, and above all they were the leaders of opinion in the assembly of the nation.[9] They exercised a certain control over temporal justice, their legal orders took precedence of those of earls,[10] and the State officials had moreover to support the bishops with the temporal arm.[11] The joint inspection of the public prisons was also given to the bishops,[12] who often set prisoners free on the feasts of the Church,[13] and through their right of giving sanctuary were a safeguard against private vengeance and the

rude administration of justice in those days.[14] They were treated with the greatest honour by the king,[15] and were often in his absence left as administrators of the realm, as, for example, Archbishop Lanfranc in England.[16]

[1] Bossuet, Defensio Decl. Cleri. Gall. P. i. l. ii. c. xxxvi. p. 254: 'Cum (episcopi) commissos greges paterna charitate etiam in negotiis saecularibus adjuvarent ipsique reipublicae non tantum ornamento, verum etiam tutelae ac firmamento essent, eos tanta regum ac civium charitas et reverentia prosecuta est, ut jam reipublicae pars maxima interque optimates primi haberentur, multi etiam lapsu temporis suarum urbium principatum ditionemque obtinerent, quae sacro conjuncta ordini et ejus dignitate tanquam fundamento nixa longe tamen absunt ab iis, quae primae institutionis esse constat.' On the political authority of the bishops from the fourth century, vide Thomassin, P. iii. l. i. c. xxvi. seq. xxxi.

[2] Döllinger, Lehrbuch, ii. p. 11. Neander, Kirchengeschichte, ii. p. 52. Giesebrecht, l.c. i. pp. 76, 331, p. 8. Phillips, l.c. p. 64 seq. Cf. Willelm. Malmesb. de Gest. Angl. l. v.; Thomassin, l.c. c. xxviii. seq.

[3] Conc. Tolet. iv. 633, can. 75; vi. 638, c. 3; ix. 655, c. 10. Hefele, Conc. iii. p. 80 seq. 83, 92. Cf. Fleury, t. viii. l. xxxvii. n. 50.

[4] Can. 12. Mansi, xii. 937. Hefele, l.c. p. 597.

[5] Nithard. ap. Pertz, Mon. ii. 668. Hefele, iv. p. 521.

[6] Pertz, i. 512; iii. 547. Hefele, iv. p. 521.

[7] Cf. the Council of Pavia, 889 or 890. Hefele, iv. p. 98 seq.

[8] Phillips, Deutsche Geschichte, i. p. 469 seq.; ii. p. 314 seq. 407 seq.

[9] Cf. Thomassin, l.c. et seq. P. iii. l. iii. c. xxv. n. 6 seq.; c. xxiv. n. 1 seq.

[10] Conc. Tribur. 895, can. 9. Hefele, iv. p. 533. Thomassin, P. ii. l. iii. c. lxxxix. n. 1 seq.; c. xcvii. n. 1, 9.

[11] Conc. Paris. 846, c. 71. Mogunt, 847, c. 7; 851, c. 2. Tribur. 895, c. 3. Hefele, iv. 112, 120, 171, 532.

[12] Conc. Aurel. v. 549, c. 20.

[13] Bened. Levita. Capit. l. ii. c. 107.

[14] Walter, Kirchenrecht, § 345, p. 611, note 7.

[15] For examples, vide Thomassin, P. ii. l. iii. c. lx. n. 6-11; c. lxii. n. 3 seq.; c. lxiv.

[16] Thomassin, P. iii. l. iii. c. xxiv. n. 4.'

§ 9.

The state of society was moreover such that the aid of the Church could not be dispensed with, and could be replaced by no other.[1] Outside the Church violence and barbarity, sword and conquest, the untamed powers of nature, reigned unchecked, both before the time of Pipin and Charlemagne, and after them under their more feeble successors, and indeed long after the

complete extinction of their race. In spite of the contempt for learning and culture, there existed still a deep reverence for religion and for its ministers; in spite of all passions, faith was still living. Monasteries were held in high honour as abodes of purer life, and persons high in rank took pleasure in visiting them, and frequently chose them as places of retreat for the remainder of their lives.[2] Discipline and sound principles could come from the Church alone; enlightened legislation could be her work alone; and under her influence alone could the condition of society be improved.[3] To her was due the mitigation and repression of slavery,[4] the first organised care of the poor,[5] the institution of the Truce of God,[6] the establishment of places of education,[7] and every true form of progress. Princes and people were eager to confide their weightiest interests to the clergy, and to increase their external means of power and influence;[8] for by their learning and virtue they merited trust, and by their character and authority they were the most sure support of public order. The Church, on her side, did her utmost to obtain safeguards against the many attacks and acts of aggression of princes and nobles, who sometimes, from desire of vengeance, oftener from mere covetousness, imprisoned bishops and priests, robbed them, misused them, and thrust others into their places.[9]

[1] Fleury, Hist. Ecclés. t. xiii. discours 3, Mœurs des Chrétiens, n. 57-61.

[2] Voltaire, Essai sur les Mœurs et l'Esprit des Nations, c. cxxxix. (Œuvres, xviii. pp. 235-8). Höfler, Deutsche Päpste, i. pp. 22 seq. 199 seq.; ii. p. 75 seq.

[3] Guizot, Hist. Générale de la Civilisation en Europe, leçon iii. v. vi. pp. 86 seq. 132 seq. 172 seq.

[4] Balmes, Protest. und Katholicismus, c. xiv.-xix. pp. 199 seq. Ratisbon, ed. 1844. Möhler, Gesammte Schriften, ii. p. 54 seq.

[5] Ratzinger, Geschichte der kirchlichen Armenpflege, Freiburg, 1868, p. 141 seq.

[6] Phillips, Kirchenrecht, iii. § 121, pp. 84-89.

[7] Walter, Kirchenrecht, § 337, p. 600 seq. Daniel, Classische Studien. Trans. by Gaisser, Freib. 1855, p. 57 seq.

[8] Montesquieu, Esprit des Lois, l. xxxi. c. xix.

[9] This is proved by the decrees of many Councils: *e.g.* Troyes, 878; Tribur, 895, c. 7; Troslei, 909; Hohenaltheim, 916 (Hefele, iv. pp. 518, 533, 548, 557); and others besides.

§ 10.

In all mediæval States it was considered essential to the general welfare of society that Church and State should be closely united. Their working well together had been looked upon in Christendom from the earliest times as a pledge of happiness and prosperity, and their separation as the foundation and beginning of untold evils.[1] Therefore, just as submission to temporal powers was enjoined by the Church,[2] submission to the Church was on their side impressed by kings upon all their subjects.[3] From this close union between the two powers and from the prominent position of the clergy it followed necessarily that the laws of the Church were confirmed by the authority of the sovereign of the land and by the infliction of external punishments. In the East the emperors regularly confirmed the decrees of General Councils and gave them the authority of laws of the empire, and hence they had to be observed under pain of temporal punishments.[4]

In the Germanic kingdoms the union between Church and State was far closer, and the uncivilised state of the nations increased the necessity for external penalties. The Carolingian legislation adheres closely to the canon law of the Church;[5] in Spain Councils confirmed or modified the edicts of the king;[6] in England also the same harmony existed; the decrees of a Council in 691 or 692 were transcribed into the code of laws of King Ina.[7] The Emperor Henry II. confirmed, as laws of the empire, the decrees of the Council held at Pavia by Benedict VIII. (1018) to secure their being put in force by the civil power.[8] Peter Damiani desired that bishops should proceed against misdoers according to civil law; and that the king, with the advice of the bishops and guided by canon law, should pass decrees touching on religious matters.[9] Thus had Charles the Great acted in virtue of his friendly relations with the Church; but at the same time he was careful to avoid any collision with existing ecclesiastical rules, and revoked any decrees which were contrary to the regulations already laid down by the Church.[10] She rightfully and necessarily demanded that nothing contrary to divine or

ecclesiastical precepts or to the freedom and honour of the house of God should be introduced by civil law or by custom into the life of Christian nations.[11] The sentence pronounced at Chalcedon still held good, that all imperial laws which were contradictory to canon law should be null and void;[12] but while this principle was unquestioned in the West, the bishops of the East seldom succeeded in dissuading their emperor from passing laws against the Church.[13] According to the words of Holy Scripture (St. Luke x. 16; St. Matt. x. 40; St. John xiii. 20) and of the Fathers, as also according to the dogma of the relation of the Church to Christ, every offence and insult offered to her was an offence and insult offered to God Himself.[14] The Council of Fimes, under the presidentship of Hincmar (881), declared the dignity of bishop higher than that of king, since bishops consecrate kings, and are bound to render account of them to God.[15]

[1] Ivo Carno. Ep. 238: 'Cum regnum et sacerdotium inter se conveniunt bene regitur mundus.' Ep. ad Hag. Lugdun. (Floss, Die Päpstwahl unter den Ottonen, p. 172): 'Regnum divisum et sacerdotium, sine quorum concordia res humanae nec incolumes esse possunt nec tutae.'

[2] Romans xiii. 1 seq.; 1 Pet. ii. 19. Aug. c. 24, c. xxiii. q. 5; c. 98, c. xi. q. 3. Tert. Apol. c. 30, de Idol. c. 15. Hier. in Tit. c. 3. Orig. c. Cels. v. 37. Nicol. Myst. Ep. 1, ad Amiram Cret. (Mai Spicil. Rom. x. ii. p. 61).

[3] Capitul. Franc. t. i. p. 437.

[4] Justinian, Nov. 131, c. i. Cod. i. 1, 47, 48.

[5] Analyse des Capitulaires, in Ceillier, Hist. des Auteurs, t. xviii. p. 380.

[6] Conc. Tolet. viii. 653, c. 13; xii. 681, c. 9; xiii. 683, c. 1-4. Hefele, iii. pp. 92, 289, 291.

[7] Mansi, xii. 56 seq. Hefele, iii. 318 seq.

[8] Mansi, xix. 343 seq. Fleury, t. xii. l. lviii. n. 47. Hefele, iv. p. 638 seq.

[9] Petrus Dam. t. iii. Opusc. 4, p. 30: 'Ceterum (pontifex) deliquentes, cum causa dictaverit, forensi lege coerceat, et ipse rex cum suis episcopis, super animarum statu prolata SS. Canonum auctoritate decernat.'

[10] Döllinger, Lehrb. ii. § 74, pp. 11, 12.

[11] Joh. Saresb. Ep. 184, ad Barthol. Ep. Exon. p. 188: 'Illis (consuetudinibus rex) profecto debuerat esse contentus, quae non sunt divinis legibus inimicae, quae bonis moribus non adversantur, quae sacerdotium non dehonestant, quae periculum non ingerunt animarum, quae matris Ecclesiae, de cujus manu suscepit gladium ad ipsam tuendam et injurias propulsandas, non subruunt libertatem.'

[12] Mansi, vii. 98. The Emperor Marcian expressly recognised this

(*cf.* Gratian, c. ii. iii. d. 96; Quesnell, diss. i. in Opp.; Leon. M. a. 451, pp. 262, 265, ed. Migne, t. ii.), and was highly praised for it by Facundus of Hermiane. Defens. Trium. capit. xii. 3 (Galland. xii. 801).

[13] They succeeded sometimes. Thus in the tenth century Nikephorus Phokas wished soldiers fallen in war to be honoured as martyrs, but the bishops held fast to a canon of Basil. Theod. Balsam. in Basil. can. 13. Bever. ii. p. 70. Cedren. Chron. ii. p. 369.

[14] Bernard. Ep. 45, ad Ludov. Reg. Franc. (Migne, clxxxii. p. 150): 'Non utique episcopo Parisiensi (infensum vos redditis) sed Domino paradisi, et quidem terribili et ei qui aufert spiritum principum (Ps. lxxv. 12, 13). Ipse quippe est, qui ad episcopos dicit: qui vos spernit, &c. (S. Luc. x.).' Petr. Bles. Ep. 153, p. 447: 'Sponsa enim Christi (Ecclesia) est et injurias sponsae Christus reputat suas.' Joh. Saresb. Ep. cit. p. 189: 'Sponsum exhonorat Christum, quicunque inhonorat ecclesiam sponsam ejus. Sunt enim corpus unum, imo et spiritus unus, et quod amplius est, collatione gratiae quodam modo sunt Deus unus, dum admiribili commercio illa, quae carnis sunt, ex natura primitiva Domino impertit, ut ab eo plenitudinem divinae naturae recipiat et oleo exultationis quadam ratione consortii abundet ab illo et effluat tota.'

[15] Mansi, xvii. 537, c. i. Hefele, iv. p. 522.

§ 11.

All jurisprudence of former days distinguishes between natural and positive law. The first rests upon the principles implanted by the Creator in human nature, has its foundation on its own intrinsic necessity, is unchangeable, eternal, and everywhere the same.[1] The second is founded on the free will of the lawgiver, and is liable to change, because it is called for by no intrinsic necessity.[2] The natural law was called the eternal law, when considered as God's will determining the order and government of the world; and was called the natural law when manifested in the heart and consciousness of mankind.[3] As originating in God the law of nature is also called divine law.[4] Positive law is divided into divine law (the old and new covenant)[5] and human law, which again is subdivided into spiritual and temporal (or civil) law, upon which rests the law of nations.[6] Public law rules all that concerns the general ordering of the State or of the Church; private law, all that has to do with the mutual relations and duties of individuals. These two laws rest partly upon natural, partly upon positive human law, knowledge of which is to be gained not from written codes only,

but from customs rendered sacred by long usage.[7] It was an accepted rule that the civil law might never be prejudicial to the natural law; no civil law, no custom could prevail over it;[8] and more than this, any temporal law which was contrary to the natural or to the positive divine law was null and void, and was no law at all.[9] Thus a distinction was ever made between those commands which are binding at all times and in all places and those which have not this character.[10] The task which temporal legislation had before it was, first, to adhere to the natural and divine law;[11] and to do this it needed the guidance of the Church, who in the widest and in the strictest sense is guardian of the deposit of the divine law;[12] secondly, to place upon human freedom no restraint which was not demanded by the well-being of society;[13] and here again the council of the Church was of the highest value. In support of this was quoted Malach. ii. 7, Ag. ii. 12, according to which the priests of God are the guardians of the law, and are to be consulted concerning it.[14] Legislation was to be in conformity with the decrees of the Church.[15]

[1] Arist. Eth. v. 7. Cic. de Leg. ii. 4, 5; de Republ. iii. 22 (et pass.); de Invent. ii. 22, 53. Or. pro Milone. Seneca, Ep. 65, ad Lucil.; Rom. ii. 14, 15, and on it the Fathers: Aug. Conf. vi. 4; Instit. Jur. Civ. i. 2, Ulp. f. 1, § 3; Dig. de Just. et Jure, i. 1. Gratian, c. i. 7, d. 1. S. Thom. in l. iv. sent. d. 33, a. 1; Sum. i. 2, q. 94, a. 6. Suarez, de Leg. i. 1 seq. Domat, Droit Public. Préface, pp. 15, 16. Zallinger, Instit. Jur. Nat. Princ. Bouix, Tract. de Princ. Jur. Can. P. i. sect. 1, c. iii. p. 16 seq. Leibnitz, Observ. de Princ. Jur. § 2 (Opp. iv. iii. p. 270): 'Jus naturale est, quod ex sola ratione naturali sciri potest sine revelatione.' Cf. Hemming, de Lege Naturae Apodict. Methodus, Wittenb. 1577; Hugo Grot. de Jure Belli et Pacis, Paris, 1625, l. i. c. i. § 10, 12.

[2] S. Thom. Sum. i. 2, q. 91, a. 3; q. 95, a. 2. Lactant. Div. Inst. vi. 8. St. Bernard. de Praecepto et Dispens. c. iii. p. 864 seq.

[3] S. Thom. l.c. q. 93, a. 1; q. 91, a. 2, 3; a. 4; q. 95, a. 2. Soto, de Just et Jure, libri vii. Salam. 1556. Other authors apud Walter, Naturrecht, § 528, 529, p. 540 seq. Cf. § 61, p. 69.

[4] Isidor. Orig. v. 2 (c. ii. d. 1).

[5] Thomas. Instit. Jurisprud. Div. i. ii. § 4, 117. Bouix, l.c. c. iv.

[6] Bouix, l.c. c. v.

[7] Domat, Lois Civiles, livre prélim. tit. 1, sect. 1, n. 2 seq. Bouix, c. vi.

[8] Petrus Bles. Ep. 70, p. 218: 'Jus civile naturale corrumpere non potest, cum jus civile a naturali quodammodo tollatur.' Ep. 82, p. 254:

'Ubi divina et humana jussio sibi invicem contradicunt, obediendum est Deo magis quam hominibus. Cumque sint duae leges, exterior et interior, interior semper praejudicat, quodque puritas conscientiae dictat mihi, exteriori praecepto fortius est et omnem indulgentiam alienae dispensationis evacuat.'

[9] S. Thom. i. 2, q. 95, a. 2: 'Si lex humanitus posita in aliquo a lege naturali discordet, jam non erit lex, sed legis corruptio.'

[10] Joh. Saresb. Polycr. iv. vii. p. 527: 'Sunt etenim praecepta quaedam perpetuam habentia necessitatem, apud omnes gentes legitima et quae omnino impune solvi non possunt. Ante legem, sub lege, sub gratia, omnes lex una contringit: Quod tibi non vis fieri, alii ne feceris (Tob. iv.). In his dumtaxat, quae *mobilia* sunt, dispensatio verborum admittitur, ita tamen, ut compensatione honestatis aut utilitatis mens legis integra conservetur.' Cf. l. vii. 17. Bernard. de Consid. l. iii. c. iv. n. 18. Petrus Vener. l. i. Ep. 23, p. 148.

[11] 'Conditor legum temporalium, si vir bonus est et sapiens, legem aeternam consulit, ut secundum ejus immortales regulas, quid sit pro tempore jubendum vitandumque, decernat.' Aug. de Vera Relig. c. xxxi. Cf. Thom. i. 2, q. 95, a. 2.

[12] In the strict sense, divine law comprises only the natural law and the positive law of direct revelation; in the wider sense, ecclesiastical law also. Cf. Andries, Doctrina Salmeronis, p. 20.

[13] Auct. (not St. Thomas) de Reg. Princ. iii. c. xi.: 'Ad hoc Deus providit de eis (regibus), ut regnum regant et gubernent et unumquemque in suo jure conservent.'

[14] This was done by the bishops of the kingdom of Charles the Bold, writing to Lewis the German. Baron. a. 858.

[15] In respect to this, St. Bernard. de Consid. l. iv. c. vii. n. 23, calls the Pope, regum patrem, *legum moderatorem*, canonum dispensatorem, sal terrae, *orbis lumen*. Many laws, especially in cases of marriage, were issued at the request of Popes and bishops; *e.g.* even by King Luitprand (712-744): Leg. Longob. Luitpr. v. 4.

§ 12.

The two ideas especially realised in the Middle Ages were freedom and religion.[1] They were not in opposition, but mutually supported one another; the Church, in which religion was incorporated, was at the same time the guardian of freedom. 'In the Middle Ages self-government, which was preserved by the formation of corporations, was a means of satisfying the Teutonic spirit of freedom, and associations with their abundant resources elevated the interests of life and strengthened its energies. Thence came that wonderful wealth of creative power which was seen to spring forth in that remarkable

time, almost without help from the State, in every department of human existence, in science, art, political life, industry, commerce, and in devotion to the higher aims of life.'[2] These multifarious societies had all more or less of a religious stamp; they had their patron saints and their festivals, and were brought in continual contact with the Church.[3] Civil and political freedom was based on the recognition of the rights due to each class, and this recognition found its main support in the Church; true freedom was realised and secured in Christendom alone.[4] True national freedom does not consist in outward show, but is founded upon an inward organisation;[5] the Middle Ages were, moreover, rich in provincial, municipal, and corporative liberties, and strove hard to protect them all. But high though freedom stood, Religion stood still higher;[6] she taught the true use of earthly freedom, and was herself the highest good, to be worked and striven for above all else. The pastors of the Church were bound by the law of God, which forbids all iniquity, to punish every disobedient subject (2 Cor. x. 6), and to oppose the mighty of the earth if they transgressed a single article of this law.[7] In such cases the pastors of the flock were by no means to keep silence, but to fulfil their charge with courage; bishops who were merely hangers-on of princes, and proved themselves cowards in their dealings with the great of this world, were not thought worthy of the name of bishop.[8] Of old those prelates won the highest renown who defended the freedom of the Church,[9] such as St. Thomas à Becket.[10]

[1] Joh. Saresb. Ep. 193, ad Ep. Exon. p. 207: 'Duae causae sunt, quas homines affectuosissime tuentur et quas praeponunt animabus suis: altera *libertatis*, altera *fidei* et *religionis*.' Also Petrus Bles. tr. de Instit. Ep. p. 1111: 'Duo sunt, *justitia* et *libertas*, pro quibus quisque fidelis usque ad sanguinem stare debet.'

[2] Walter, Naturrecht und Politik, § 330, p. 300.

[3] On the Confratriae under Hincmar in the ninth century, vide Thomassin, P. i. l. ii. c. xxv. n. 5; on the Workmen's Associations in Spain, vide Capmany's Memoirs of Barcelona (1779), of which an extract is given in Balmes' Protestantism and Catholicity, Eng. Trans. note 35.

[4] Petrus Bles. Ep. 121, p. 355: 'Ecclesia quidem a diebus antiquis libera est, et filii ejus, qua libertate Christus nos liberavit dicens in Evangelio, quia filii liberi sunt (St. Matt. xvii. 25).' Cf. Aug. de Civ. Dei, l. xv. c. ii.

[6] Cf. Balmes, l.c. vol. iii. c. xlviii. p. 2, German edit.

[7] Joh. Saresb. l.c.: 'Illa tamen (causa) quae fidei est, creditur esse praestantior et procul dubio justior est, adeo quidem ut et profanae religionis homines hoc constantissimum habeant.'

[8] Joh. Saresb. l.c.: 'Haec (lex Dei) iniquitatem prohibet et pastoribus Ecclesiae praescribit, ut omnem ulciscantur in obedientiam.' p. 208. 'In omni ergo divinae legis articulo contendendum est, et potestatibus ascendendum ex adverso, et quidquid charitatem impugnat, quae legis est plenitudo, totis viribus subvertendum.'

[9] Id. Ep. 201, ad Albert. Card. p. 223: 'Si pastorale officium nonnisi ad nutum principis liceat exercere, procul dubio nec crimina punientur nec tyrannorum arguetur immanitas nec reipsa diu stabit Ecclesia. Ergo quisquis ille sit, qui in tantarum pravitatum usurpatione silere et dissimulare consulit sacerdotes, haereticum esse non dubito et praeambulum Antichristi, si ipse non sit personaliter Antichristus.' Polycr. l. viii. c. xxiii. p. 809: 'Ait Cyprianus: Episcopus si timet, actum est de eo.' Petr. Bles. Ep. 100, p. 310: 'Verumtamen remissio, quae os praelati obstruit, quae adulatorem et venditorem olei facit, dum sibi quietem et honorificentiam vematur in favore principum, haec miseros praecipitat in foveam scandalorum.'

[10] Petr. Bles. Ep. 20, p. 71: 'Non enim potest esse praeclarior famae titulus in praelato, quam si viriliter tueatur statum ecclesiasticae libertatis.'

[11] Petr. Bles. Ep. 22, pp. 77-82; Ep. 27, p. 92 seq. (in which St. Thomas is called, religiosorum gloria, deliciae plebis, timor principum, Deus Pharaonis). Vide many examples in Thomassin, P. ii. l. iii. c. lxiii. The example of the ancient prophets is put before bishops by Petr. Bles. Tract. de Instit. Episc. p. 1112.

Part II. The Power of the Papacy.

§ 1. Exalted position of the Pope. § 2. The Pope the father of the one family of Christian nations. § 3. Disputes settled by him. § 4. Public affairs conducted by him. § 5. The Pope the refuge of all. § 6. Legislation of the Popes. Laws upon usury. § 7. The Popes active in the interests of princes. § 8. Their government. § 9. Their temporal power not inconsistent with the spirit of the Gospel. § 10. Their power developed naturally.

§ 1.

The political influence of the clergy, and in particular of the bishops, being so great, that of the Pope must have been yet greater, for as Head of the Church universal he was held in the highest veneration, and from the latter half of the eighth century he had been a sovereign in Italy. He was the one

centre of all Christendom; he was repeatedly called upon by princes and people, and, as time went on, he could not withhold from intervention in the disputes of individual nations.

Gregory II. specified it as the office of the Pope to make and maintain peace on all sides.[1] Gregory IV. felt obliged (in 833) to make an attempt (which was fruitless) to mediate between Lewis the Pious and his sons; and Abbot Wala of Corvey proved from ecclesiastical authorities that in so doing he was fulfilling his office.[2] Nicholas I. (865) designates Rome as a central city, in which thousands seek a refuge and the protection of St. Peter.[3] The chair of Peter, besides the splendour which belonged to it as such, shone with the added splendour gained for it by the energy, justice, and wisdom of its occupants; the Papacy, besides its supreme and inborn rights, had others, which were secondary and additional.[4] But the deep foundation of them all lay ever in the religious character of the Primacy,[5] which had the power of adapting itself to every new situation, and by its very nature was bound so to adapt itself.

[1] Gregor. II. Ep. 2, ad Leon. Isaur.: 'Scire autem debes ac pro certo habere Pontifices, qui pro tempore Romae exstiterint, conciliandae pacis causa sedere tamquam parietem integerrimum septumque medianum orientis atque occidentis, ac pacis arbitros, ac moderatores esse, quique ante te fuerunt imperatores in hoc componendae pacis certamine desudarunt.'

[2] Paschas. Radbert. in Vita Walae Abbat. ap. Mabillon, Acta SS. O.S.B. saec. 4, P. ii. l. ii.

[3] Nicol. I. Ep. 8. Mansi, xv. 207.

[4] Bossuet, l.c. pp. 254, 255: 'Distinguamus .... quae institutionis sint, quae sint accessionis, quae primaria, quae secundaria, quae innata, quae annexa sint. Pontifices Romani, quo altiore loco erant, Petri nomine ac majestate primum, quae post Christum erat maxima, tum dominae urbis splendore commendati, haec annexa et secundaria longe eminentius (quam reliqui episcopi) obtinebant. Coepit ergo Romana Sedes non modo in ecclesiasticis, quod et ipsi innatum, sed etiam in civilibus majestatem habere negotiis, eo maxime tempore, soluta in occidente imperii vi, Romanorum Pontificum fide atque observantia singulari suam dignitatem in his partibus sustentabant.' He then quotes Gregory II. l.c. and the letters of Gregory I., of which mention will be made in Essay xiii.

[5] This is also shown by the titles given to the Pope by St. Bernard. de Consid. l. ii. c. viii. n. 15: 'Tu princeps episcoporum, tu haeres apostolo-

rum, tu primatu Abel, gubernatu Noe, patriarchatu Abraham, ordine Melchisedech, dignitate Aaron, *auctoritate Moyses, judicatu Samuel*, potestate Petrus, unctione Christus.'

§ 2.

To nations still outside the pale of Christianity, peace and order were all but unknown, and this was the case even long after their conversion; the Church could endeavour to secure these blessings for them, and it was her duty to do so. 'It follows necessarily on the perfect development of Christianity, that all Christian nations, although in all else they retain their national independence, look upon themselves as brethren, and therefore upon all violence and hostility towards one another as forbidden.'[1] The Church doctrine of the common origin of all men, their common hereditary guilt, and their one Redeemer, led to the perception of the physical and spiritual unity of mankind; and in the Church was created an organisation by which this unity could be realised and made known.[2] This unity found expression in the language of the Church (Latin), which was likewise the language of diplomacy, in the strivings after knowledge and art, and also in the principles of faith, of morality, and of society. All Christian nations formed one family[3]—Christendom united in one faith.[4] This family had need of a head, of a father, and this head it possessed in the person of him who was honoured by all as their common father,[5] the Vicar of God,[6] the successor of St. Peter,[7] to whom Christ had delivered His sheep and His lambs to be fed. Emperors and kings addressed him as father, and were in turn called by him sons.[8] He was to the whole of Christendom the vicar of the Heavenly King, Jesus Christ, the interpreter of the divine law, the chief pastor of souls, their councillor and leader, the prince of peace; the inexorable avenger of evil and injustice,[9] the 'hammer' of the guilty, the consoler of the innocent,[10] the universal physician.[11] He was the faithful and wise servant, whom the Lord had set over His family (St. Matt. xxiv. 25).[12] The Apostolic See of Rome necessarily became the centre of the national life of Europe, even before the establish-

ment of the Western Empire; and still more was this the case when that empire became unable to maintain its high position, and the people were in need of some bond of union.[13]

[1] Walter, Kirchenrecht, book viii. § 342, p. 606, 11th ed.

[2] Walter, Naturrecht und Politik, § 38, pp. 46, 47.

[3] Guizot, l'Eglise et la Société Chrét. c. xiv.: 'En même temps que son origine est *divine*, l'idée fondamentale du Christianisme est essentiellement et par excellence *humaine*. Sous l'empire de cette idée le Christianisme a considéré tous les hommes, tous les peuples comme liés entre eux par d'autres liens que la force, par des liens indépendants de la diversité des territoires et des gouvernements. Tous les hommes, tous les peuples étaient compris dans sa mission: *Allez et instruisez toutes les nations.* En travaillant à *convertir* toutes les nations, le Christianisme a entendu aussi les *unir*, et faire pénétrer dans leurs rapports des principes de justice et de la paix, de droit et de devoir mutuels. C'est au nom de la foi, et de la loi Chrétienne, qu'est né dans la Chrétienté le droit des gens.'

[4] Cf. Döllinger, Kirche und Kirchen, p. 3.

[5] Theodore the Studite styles Pope Leo III. κορυφαιότατος πατὴρ πατέρων, l. i. Ep. 33, p. 1017, ed. Migne. The Pope is usually called Pater Patrum even by bishops. Andreas, Praevalit, Ep. ap. Baron. a. 519, p. 35.

[6] The Pope is styled Vicarius Christi as early as the fifth and sixth centuries; in the ninth the title is more frequent. Anti-Janus, p. 67, n. 19. St. Bernard, who even sometimes calls bishops vicarii Christi (Tract. de Morib. et Off. Ep. n. 36, p. 832, Ep. 183), and also speaks of the Pope as the Vicar of Peter (Ep. 183, 243, 346), calls St. Peter (de Cons. ii. 8, n. 16) Unicus Christi Vicarius. Cf. l. iv. c. vii. n. 23.

[7] Vicarius stands for the Greek τοποτηρητής, locum tenens (locum Petri tenens the Pope is called even by St. Cyprian, Ep. 52; regens locum Petri by Innoc. I., &c.), and vicarius is in general qui vices gerit alterius. Thus it is synonymous with successor. St. Cyprian, Ep. 68, unites the two expressions (A.-J. p. 67, n. 15). Schulte, iii. p. 135, considers it significant that in old times the expressions vicarius and successor Petri are seldom used. But of what account is this, when so many equivalent expressions are used, such as haeres Petri (Leo M. serm. 3, c. iv. and elsewhere often), haeres sedis, or administrationis Petri, and numberless paraphrases? But it is not true that these expressions are rare. Vide Letters of St. Boniface (*e.g.* Ep. 48, ad Cuthbert, Baron. a. 740, vicarius Petri). A distinction between vicarius and successor has only been strictly made since the twelfth century. Thus John of Salisbury, Ep. 198, ad Alex. III. (Migne, cxcix. p. 217) calls the Pope successor Petri, vicarius Crucifixi. Innocent III. l. ii. Ep. 211, Alex. Imp. (Migne, ccxiv. p. 769), says: 'Vicarios Christi et principis Apostolorum successores.' Petrus Vener. l. i. Ep. 11, says: 'Vicarius Dei.'

[8] The Emperor Marcian, at the close of the letter to Pope Leo, Dec. 18, 451 (Leo, Ep. 100, p. 1114), calls the Pope 'Father;' Constantine Pogonatus calls him 'your paternal Holiness' (Baron. a. 678, n. 4); Justinian,

in his letters to Hormisdas, styles his uncle, Justin. I., as filius vester (Baron. a. 520, n. 35; a. 521, n. 2, 3); paternitas vestra, write the Western princes, *e.g.* Lothair II. (Baron. a. 866, n. 37-42). Pope John II. calls Justinian his son (Baron. a. 534, p. 198, l. viii. Cod. i. 1, de S. Trin.). Likewise Vigilius, 545 (Mansi, ix. 41, J. n. 593, p. 78); Agatho also calls Constantine Pogonatus (Baron. a. 680; Mansi, xi. p. 234) son, and Nicholas I. calls Michael III. son (Mansi, xv. 234; Jaffé, n. 2124, p. 249), &c. Cf. Thomassin, P. ii. l. iii. c. lx. n. 4.

[9] Joh. Saresb. Polycr. l. viii. c. xxiii. p. 813: 'Qui omnium coercere debet excessus.' Innoc. III. l. xv. Ep. 189 (Migne, ccxvi. p. 711).

[10] Nocentium malleus, et innocentium consolator. Petrus Bles. ad Innoc. III. Ep. 151 (Migne, ccvii. p. 443).

[11] Ignat. Cpl. Patr. ad Nicol. I. Baron. a. 867, n. 108. Mansi, xvi. 47, 325.

[12] St. Bernard. de Consid. l. iii. c. i. n. 2.

[13] Walter, Kirchenrecht, p. 606.

§ 3.

To the head of the family falls the duty of deciding who shall be adopted into its circle; and in the same way application was made to the Pope respecting adoption into the union of Christian nations, and new kingdoms received recognition from him, as in the present day from treaties and congresses. It is the right and the duty of the head of the family to ward off and to pacify strife among its members; and in the same way, when disputes threatened, the chief pastors of the Church intervened as mediators, or were called in as arbitrators by the disputants themselves.[1] The Church sought to put an end to war, with its horrors and crimes, or failing this, to limit and lessen its sufferings as much as possible, especially by forbidding weapons of too murderous a kind.[2] The Church authorities were to decide upon the justice of a war, and many held that without this war was never to be made.[3] Many wars were, in fact, hindered by the Papal authority, or at least brought to a speedy close. Was that a calamity? Can that be made a cause of complaint, even in the nineteenth century? Can a jurist so distinguished as Walter be accused of falsehood, when he says?—'Even if a perpetual tribunal cannot be established over States, submission to an umpire chosen by either party at least is possible. As civilisation advances, the reason of all mankind will infallibly labour unceasingly to promote this end,

and strive to make it a necessity of international law.[4] War is justifiable only when States have, as a last resort, no other means of enforcing their just claims against one another.[5] The organisation of mankind will never be complete without an international tribunal, provided with powers of coercion.'[6] Truly an age which is content with an artificial balance of power in politics,[7] while the most solemn treaties are despised and violated;[8] which is forced to endure either a state of war, or a state of armed peace, consuming the marrow of nations;[9] which, even amid the mightiest social tempests, persists in holding politics aloof from religion and morality, and is ever hastening on towards terrible catastrophes,—such an age has, indeed, no right to look down with insolence upon the principles and the practices of the Middle Ages.

[1] Walter, Kirchenrecht, p. 607.

[2] Walter, ibid. specially notes 5, 6.

[3] Gerhoch, de corrupto Eccl. statu (Baluz. Miscell. v. p. 117): 'Denique in omni militum vel civium guerra et discordia vel pars altera justa et altera injusta, vel utraque invenitur injusta. Cujus rei veritatem patefacere debet sacerdotalis doctrina, sine cujus censura nulla bella sunt movenda.'

[4] Walter, Naturrecht und Politik, § 473, p. 462 seq.

[5] Walter, l.c. § 474, p. 464.

[6] Walter, l.c. § 478, p. 469. In this point of view Leibnitz considered the Papal power in the Middle Ages most suitable (Tract. de Jure Suprematus, P. iii. Op. iv. 330; Lettre seconde à M. Grimaret); and in our own day, David Urquhart has spoken for the establishment of a supreme tribunal of this sort, under the presidentship of the Pope (Appel d'un Protestant au Pape pour le rétablissement du Droit Public des Nations, Paris, 1869).

[7] 'Behind this bulwark,' says Trendelenburg (Naturrecht, § 228), 'which States have formed out of the passions of mankind, and which they have been building up for the last three hundred years, without yet making it invincible, something better [?] than itself may be forming, while it serves to maintain peace provisionally. But as long as this repose is protected only by the force of envy and jealousy, as long as only a mechanical balance is calculated on, so that each one may know that there exists on the other side as much power of resistance as on his side of attack, as long as the balance of power rests not on a moral centre of gravity, just so long every State whose power is increasing, or who knows how to shift the weights, is able to disturb the balance of power, and so long is every State as a last resort thrown upon its own might as a safeguard of its rights.'

[8] *E.g.* the Paris treaty of 1856, torn up by Russia.

[*] Hardly has the German nation victoriously repelled the attack of its neighbour than the conquered party, even before all the conditions of peace are fulfilled, cries out for 'revanche et vengeance.'

§ 4.

Moreover, it is the business of the head of the family to direct the common undertakings of its members; and naturally the Popes had to take in hand anything which was considered to concern all the Christian nations of Europe. Thus their interposition in the Crusades was thought to be, and was, in truth, indispensable. They alone could lead and regulate such multitudes; they alone could secure to the sovereigns who took up the cross peace at home during their absence; they alone could insure harmony of action, and keep alive the religious principle which had first inspired the undertaking.[1] The Council held at Clermont, 1095, by Urban II., was the origin of the Crusades; the Pope gave the first impulse to the vast movement, when he appointed the Bishop of Puy to be legate on the expedition, and enforced the observance of the Truce of God.[2] The families and goods of the Crusaders were placed under the protection of St. Peter and the Roman Church, and this was renewed by the ninth General Council (1123).[3] In the second Crusade, Pope Eugenius III.,[4] and in the third Crusade, Gregory VIII. and Clement III. were equally active.[5] Earnestly as the Popes promoted the Crusades, they never made them obligatory as long as the Crusaders were troubled with disturbances at home.[6] Innocent III. energetically defended the principle of these expeditions, when those taking part in the fourth Crusade were diverted from their purpose by the Venetians, and he was only in some degree appeased by the hope of the advantages likely to result to the Christian dominion in Palestine.[7] Even after the wreck of these expeditions, it was the Popes alone who for a long time opposed the power of the Mahometans, especially from the time that Constantinople fell into the hands of the Turks (1453), and when the Sultans were becoming daily more and more menacing to Western Christendom. So long as the danger continued they were

true to the task they had once undertaken, and Pius II. and Pius V. in particular put forth all their strength against the Turks.

[1] Bossuet, P. i. l. iv. c. v. p. 344: 'Placebat .... Christianis regibus in illis sacris bellis praeesse omnibus pontificiam potestatem, ut et conjunctioribus animis et majori religionis reverentia rem gererent. Saepe etiam reges ac principes bellum sacrum inituri se suaque omnia pontificibus tuenda commendabant,' &c. Cf. Fleury, t. xviii. discours 6, n. 7, 8. Michaud, Hist. des Croisades, t. vi. l. xxii. c. vii.

[2] Hefele, Conc. v. pp. 203, 207, 208.

[3] Conc. Later. i. can. 12. Hefele, v. p. 340.

[4] Hefele, v. p. 443.

[5] Hefele, ibid. p. 650 seq.

[6] Paschalis II. a. 1100, 1101, relative to Spain. Jaffé, n. 4368, 4386, p. 481 seq. Innoc. III. l. i. Ep. 5, 270, 271. Migne, ccxiv. pp. 5, 227 seq.

[7] Gesta Innoc. III. n. 85 seq. p. cxxxviii. seq.; l. v. Ep. 161, 162, p. 1178 seq.; l. vi. Ep. 99-102; Ep. 230-232, pp. 103, 260 seq.; l. ix. Ep. 189, p. 957 seq.

§ 5.

A good father, when called upon by his children, naturally strives his utmost to stand by them and aid them, to defend them and intercede for them. In like manner the Popes were the refuge of all.[1] They would have laid themselves open to the bitterest reproaches had they declined to use an authority so much needed, and so advantageous to the public welfare, and which was looked upon as an adjunct to their supreme power in the Church.[2] Whosoever felt himself oppressed turned to the Roman See, and if no help came to him from this See, it was felt to have neglected its duty. The Holy See was looked upon as the seat of justice and of righteousness;[3] the Pope was the father of the orphan, the judge of the widow, the undaunted champion who neither refused his services to the oppressed nor showed favour to the oppressor;[4] the Roman Curia, the 'mistress of the world,' was set over all men, as the avenger to chastise, as the judge to show mercy.[5] The task was a mighty one, and the Papal dignity a most heavy burden.[6]

[1] Joh. Saresb. Ep. 38, ad Hadr. IV. p. 25: Lapis adjutorii. S. Bernard. Ep. 199, ad Innoc. II. p. 367: Refugium oppressorum.

[2] Bernardi, De l'origine et des progrès de la législation française,

Paris, 1816, l. i. c. ii. p. 71 seq. Hurter, Innocenz III. vol. ii. p. 435, and elsewhere.

[3] S. Bernard. Ep. 158, p. 316, ad Innoc. II.: 'Summae aequitatis sedes.' Petrus Venerab. l. vi. Ep. 28, ad Eugen. P. III. (Migne, clxxxix. p. 443): 'Oro, obsecro, supplico, ut causam pauperis . . . . vobis assumatis et contra potentes et violentos adversarios defendatis. Nostis enim, quod sedes vestra est illius, cui dicitur: Justitia et judicium praeparatio sedis tuae (Ps. lxxxviii. 15) et cui rursum: Justitia plena est dextera tua (Ps. xlvii. 11) et de quo iterum: qui facit judicium injuriam patientibus (Ps. cxlv. 7). Quod si alteri quam vobis loquerer, adderem illud Isaiae (i. 17): Quaerite judicium, subvenite oppresso, judicate pupillo, defendite viduam,' &c.

[4] S. Bern. Ep. 156, ad Innoc. II. p. 314.

[5] S. Bern. Ep. 168, ad Cardinales, c. ii. p. 328.

[6] S. Bern. Ep. 237, c. iii. p. 427: 'Onus insuetum et nimium, quod et gigantinis, ut aiunt, vel ipsis quoque angelicis humeris formidabile videatur.'

§ 6.

As early as the time of Dionysius Exiguus, Papal decretals were included in codes of law; they were everywhere produced as authorities, and treated with the highest respect.[1] In later times the collections of decretals by Gregory IX., Boniface VIII., and Clement V. obtained universal acceptance, and had everywhere the force of law.[2] As early as 1075, Gregory VII. was able to point to the fact that the law of the Roman Pontiffs was more widely obeyed than the law of the Emperor, and that, in the words of Psalm xviii. 5, their sound had gone forth into all the earth, and their words unto the ends of the world.'[3] Papal legislation has, moreover, done an immortal work for civilisation.[4] While the civil law recognised trial by ordeal to decide innocence or guilt,[5] and even questions of law,[6] the Popes ever rejected this means of procedure:[7] their decretals were directed towards the maintenance of the Truce of God,[8] the disuse of tournaments and deadly weapons,[9] the abolition of the custom of plundering wrecked vessels, made a source of gain even by princes,[10] the amelioration of the condition of serfs,[11] the prevention of the unjust oppression of the Jews,[12] the repression of numberless abuses and acts of violence in all lands.[13] Many clauses of the Roman law were altered by the Papal legislation, such as those relating to property, to prescrip-

tion, and the bona fides requisite for it, as also to contracts, giving greater importance to good faith;[14] the laws also as to testamentary dispositions and oaths were greatly widened.[15] As to usury, Papal legislation dealt with it in detail.[16] This, indeed, is nowadays made a subject of reproach to the Popes, and it is said that by the prohibition of the receipt of interest on the loan of money real usury was increased, and the welfare of whole countries, as well as the growth of commerce, was injured.[17] But it is forgotten that this same reproach must fall, not on the Popes alone, but also on the Old Testament legislation, on the whole ancient Church,[18] on the Councils, which here stand on precisely the same ground as the Popes,[19] on ancient civil legislation,[20] and even on the older Protestant theologians.[21] It is also forgotten that the present economical condition of society, in which money is become a productive commodity, and in which consequently the loan of money is differently regarded, has only come about gradually.[22] The circumstances of a loan may differ widely. First, a man may borrow money from necessity, to get provisions for himself and his children, so that he makes no profit from the loan, but practises the most strict self-denial in order to repay it. In this case, the lender, if he requires interest, extorts a gain from the distress of his fellow-man, and makes that distress greater. Secondly, a man may borrow in order to purchase some source of income; in this case, the lender deprives himself of that which brings in a revenue to another, and he may justly stipulate for a share in his revenue. It was on this principle that rested the mediæval contract of *census* or rent, allowed even by canon law.[23] Thirdly, a man may borrow in order to employ the money in a profitable speculation, which can easily be done where commerce and industry are flourishing. Here too interest is fair. The question also arises: Is the amount of interest to be left to agreement, or is a maximum to be fixed by the State? Which is the greater injury, that which hinders the capitalist from making still greater gains, or which exposes the distressed poor to the extortion of money-lenders? Surely, from the moral aspect, the latter.[24] Consequently even Popes and

Councils have approved charitable pawn-houses (montes pietatis), which for pledges made loans at very low interest to distressed poor, so as to protect them from the avarice of usurers.[25] The first of the three cases we have mentioned above is radically different from the two others; and, because in former times it was the most frequent, received especial attention from the legislation of the Church in protection of the poor. Interest on productive loans was allowed in the form of 'census' and of the contract of 'societas.' Special titles were admitted justifying interest, and known as loss arising through the loan (damnum emergens), cessation of gain (lucrum cessans), and risk of the principal (periculum sortis).[26] It was not the business of the Church to anticipate the economical development of Europe; but her duty was during its course to guard her principles, the principles of Christian charity forbidding us to turn the distress of our fellow-men to our own profit.[27] It is to the honour of the Popes that they have fulfilled this duty.

[1] Phillips, Kirchenrecht, iv. § 171, p. 37 seq.

[2] Phillips, l.c. § 184 seq. p. 252 seq.

[3] Greg. VII. l. ii. Ep. 75, ad Reg. Dan. p. 426, ed. Migne.

[4] Cf. Kober, on the influence of the Church and her legislation on culture, humanity, and civilisation, in the Tübingen Theol. Quartalschrift, 1858, p. 466 seq.

[5] *E.g.* Capitul. Caris. 873. Pertz, Leg. i. pp. 519-521. Cf. Walter, Kirchenrecht, § 346, p. 612.

[6] *E.g.* under Otto I., the question whether a grandchild inheriting from his grandfather, his father being dead, must divide the property with his uncles. Giesebrech, Geschichte der Deutschen Kaiserzeit, i. p. 280, 3d ed.

[7] Nicol. I. Ep. ad Carol. Calv. 867 (c. 22, c. ii. q. 5). Stephan. V. Ep. ad Aep. Colon. Baron. a. 890 (c. 20, eod.). Alex. II. 1070 (c. vii. § 1, c. ii. q. 5). Luc. III. in c. viii. Ex tuarum, v. 34, de Purg. Canon. Celestin. III. Innoc. III. Honor. III. in c. i-iii. de Purgat. Vulg. v. 35. Innocent III. 1211, renewed the prohibition of ordeals in spiritual courts (l. xiv. Ep. 138, p. 502), and expressed himself strongly against a bishop who had permitted the trial by red-hot iron (l. xii. Ep. 134, p. 320 seq.).

[8] Alex. III. in Conc. Later. iii. c. i. de Treuga et Pace, i. 34.

[9] Innoc. III. c. un. de sagittar. v. 15; Alex. III. c. i. ii. de Torneam. v. 13; John XXII. in c. un. h.t. (9) in Xvag. Joh.; Pius V. c. un. v. 18, de Taur. Agitat. in sept.

[10] Greg. VII. in Conc. Rom. 1078, Hard. vi. 1578; Paschalis II. 1110,

Hard. l.c. p. 1898; Celestin. III. 119, Jaffé, n. 10,321, p. 889. Cf. Card. Petra, in Constit. Apost. t. i. p. 260 seq. 275 seq. Phillips, Kirchenrecht, iii. pp. 91, 709; Deutches Privatrecht, i. 131, 407. Cf. also Alex. III. in Conc. Lat. c. iii. de Raptor. v. 17.

[11] Hadrian I. 790; Urban III. 1187, c. i. 3, de Conjug. Serv. iv. 9.

[12] Greg. M. l. i. Ep. 10, 34, 35, 47; l. viii. Ep. 25; l. ix. Ep. 7, 55; l. xii. Ep. 18; l. xiii. Ep. 12. Jaffé, n. 738, 739, 751, 1146, 1163, 1213, 1496. Alex. II. ad Episc. Hisp. Mansi, xix. 954. Jaffé, n. 3485, p. 398. Alex. III. (al. Clem. III.), Mansi, xxii. 355. Jaffé, n. 9038, p. 806. Greg. IX. 1235. Raynald. ad h.a. n. 20.

[13] Thus Alexander III. forbade the killing of children by their mothers in Sweden, Ep. 975, ad Aep. Upsal. (Migne, cc. p. 850); hindered the robbing of orphans (Ep. 968, l.c. p. 845); and defended the rights of widows even against convents (Ep. 985-987, p. 864 seq.). He would not allow that the Church should ever be appointed heir, on the disinheriting of the real sons (Ep. 1447, pp. 1259-1261). Like Eugenius III. this same Pope forbade the custom reigning in Benevento, that traders and travellers who fell sick in that place might make no will, and might not choose their place of burial, their property falling to the town, as contrary to all law, divine and human (Ep. 624, pp. 595-597).

[14] Walter, l.c. § 350, p. 616 seq.

[15] Ibid. § 349, 353 seq. pp. 615, 620 seq.

[16] Decret. Greg. V. 19; Sext. V. 5; Clem. V. 5, de Usuris. Innoc. III. ad Reg. Franc. 1214. D'Achery, Spicil. iii. 5, 77, Supplem. Ep. 190. Migne, ccxvii. p. 229. Bened. XIV. Enc. 1 Nov. 1745, t. i. Const. 143.

[17] Janus, pp. 195, 236 seq. Frohschammer, Das Recht der eigenen Ueberzeugung, p. 229 seq. Anm.

[18] Cf. Hefele, Theol. Quartalschrift, 1847, p. 405 seq. Deut. xxiii. 19; St. Luke, vi. 35; Ps. xiv. 5; Ezech. xviii. 8. Tertull. adv. Marc. iv. 17; Clem. Alex. Strom. l. ii. p. 473, ed. Potter, Can. Ap. 44. Basil, Ambros., Aug., Leo I. (c. i. 8, dist. 47; c. x-xii. 7; c. xiv. q. 4).

[19] Councils of Elvira, 306, c. 20; of Arles, 314, c. 12; Nicaen. i. c. 17 (c. 2, d. 47); Agath. 506, c. 69 (cf. Hefele, i. pp. 135, 180, 405 seq.; ii. 641); Trullan. 692, c. 10; Aquisgr. 789, c. 5, 39 (Hefele, iii. 303, 623 seq.); Paris. 829, c. 53; Ticin. 850, c. 19; Rhem. 1049, c. 7 (ibid. iv. 61, 70, 693); Pictav. 1078, c. 10; Gerund. h.a. c. 9; Londin. 1125, c. 14; Later. ii. oec. 1139, c. 13; Turon. 1163, c. 2; Londin. 1175, c. 10; Later. iii. 1179, c. 25; Avenion. 1209, c. 3, 13; Narbonn. 1227, c. 8; Trevir. 1227, c. 10; Rotomag. 1231, c. 2; Conc. Château Gontier, eod. a. c. 30; Arel. 1234, c. 15 (ibid. v. 106, 117, 349, 391, 542 seq., 614, 636, 749 seq., 839, 846, 899, 902, 919). A Council of Paris in 1212 or 1213, c. 25 (ibid. p. 774), says: 'Whosoever shall sell his wares at a certain appointed time, in order to gain more by them, shall be punished as an usurer.' Further directions are given by the Councils of Albi, 1254, c. 61-63; Montpellier, 1258, c. 3, 5; Mainz, 1261, c. 25, 44; Sens, 1269, c. 2, 3, 23; St. Quentin, 1271; Lyons, ii. 1274, c. 26, 27; Arles, 1275, c. 15, 18; Cologne, 1279, c. 14; Tours, 1282, c. 6; Forli, 1286, c. 6; Würzburg, 1287, c. 23; Milan, eod. a. c. 12; Pennaufiel, 1302, c. 9; Nogaret, 1303, c. 14; Auch, 1308, c. 3; Trier, 1310, c. 31-34, 140, 141; Mainz, 1310, c. 133, 134; Bergamo, 1311,

c. 24, 25; Vienne, 1313, c. 15; Marciac. 1326, c. 48; Tarracona, 1331; Salamanca, 1335, c. 14; Padua, 1350, c. 5; Prague, 1366, c. 11; Benevent. 1378, c. 8-11; Salzburg, 1386, c. 13, &c. (Hefele, vi. 45, 51, 64, 66, 101 seq., 136, 156, 185, 201, 213, 221, 226, 343, 354, 426, 434, 441, 446, 458, 482 seq., 547, 553, 561, 603, 622, 803 seq., 832). Thus also later Diocesan Synods; Bened. XIV. de Syn. x. c. iv. n. 1.

[20] Capitul. Caroli M. 789, c. v. (Walter, Fontes, p. 50), 806. c. 9, c. xiv. q. 4). Temporal judges began quite early to seize the possessions of living usurers (as in France) or of those who had died (as in England and Germany), and they were also punished. Vide Friedburg, de Fin. inter Eccl. et Civit. Reg. Judicio, p. 101 seq.

[21] Melanchthon, in the locis (cf. Schröckh, Kirchengeschichte seit der Reformation, i. p. 283). Dr. Jacob Strauss, preacher in Eisenach, Das Wucher zu nemen und zu geben, and Haubtstuck und Artikel Christenlicher Leer wider den unchristl. Wucher, a. 1523, art. 5: 'Ain Pfenning über die Haubtsumme aufgeliehen, eingenommen ist wucher.' Carpzov. Pract. Crim. quaest. 92, n. 4 seq.

[22] Neumann, De vicissitudinibus, quas can. jus de usur. prav. placita in Germ. inde a saec. 13 usque ad med. saec. 18 subierunt. Berol. 1860. See especially Funk, Zins und Wucher, Tübingen, 1868.

[23] Martin V. 1420; Calist. III. 1455, in c. i. ii. de Emt. et Vendit. iii. 5, in Xvagg. Com.

[24] Walter, Naturrecht und Politik, § 176 seq. p. 160 seq. Cf. Kirchenrecht, § 351, p. 618 seq.

[25] Conc. Later. v. 1517, Sess. 10 (Hard. ix. 1773); Trid. Sess. 22, c. 8, 11, de Ref. Many Catholic theologians were at first opposed to the montes pietatis, as may be seen in Cajetan, Com. de Mont. Piet. c. i., and Soto, l. vi. de Just. q. 1, a. 6. Paul V. also treats of them (Const. 82, Onerosa, Bull. iii. 352). Cf. Bened. XIV. de Syn. Dioec. l. x. c. v. n. 1.

[26] Bened. l.c. c. iv. n. 2 (cf. c. iv-viii.). Devoti, Inst. Jur. Can. t. iv. l. iv. tit. 16, § 6 seq. Gury, Theol. Moral. t. i. p. 325 seq. n. 856 seq. ed. Ratisb. 1862.

[27] Cf. Funk, l.c. specially Part ii.

§ 7.

The attempt has often been made to represent the Papacy as dangerous to thrones and nations, while all that it has so nobly done in their favour has been overlooked, and over-much stress has been laid upon isolated facts, or they have even been misrepresented. How much have the Popes, at great cost to themselves, done both for kings and for people! how many concessions they have made![1] With what ardour did Gregory the Great defend the interests of the ungrateful Byzantine court, while at the same time he took under his protection the populations oppressed by the officers of that court![2] Gregory IV

sought to prevent the separation of Italy from the empire of Greece;[3] Gregory VII. defended the King of Denmark against his rebellious brothers, and warned the King of Norway not to give them his support.[4] Numerous are the examples of their benevolent care for princes and people, of their protection of the weaker against the mightier kings and races, of their beneficent labours for the peace and welfare of Christian countries.[5] Victor II. governed excellently as regent of the empire after the death of Henry III.;[6] Innocent III. did all in his power for the youthful Frederick II.;[7] also for the Christian kingdom in Palestine,[8] and for the prevention of the civil war in Hungary,[9] &c.; and Gregory X. did as much for the reconciliation of the Guelphs and Ghibellines.[10]

Amongst the Popes, Innocent III. was preëminent as a promoter of peace.[11] 'The benefits,' says Lingard, 'bestowed upon the human race through the influence and peaceful disposition of the Popes are not always appreciated by writers. In an age when warlike gains alone were prized, Europe would have sunk into endless wars had not the Popes striven unceasingly for the maintenance and restoration of peace. They rebuked the passions of princes, and checked their unreasonable pretensions; their position of common father of Christendom gave an authority to their words which could be claimed by no other mediator; and their legates spared neither journeys nor labour in reconciling the conflicting interests of courts, and in interposing between the swords of contending factions the olive-branch of peace.'[12] These merits have been recognised by Protestants, notably by Hugo Grotius.[13]

[1] Cf. Joh. v. Müller, on the Fürstenbund (W. ix. p. 164); Ständlin, Universalgeschichte der christlichen Kirche, Hanover, 1806, p. 223.

[2] For example, the populations of Sardinia, Corsica, and Sicily, l. v. Ep. 41; Mansi, ix. 1209, J. n. 991.

[3] Cf. Döllinger, Päpstfabeln. p. 152 seq.; Natal. Alex. H. E. saec. 8, diss. 1, t. xi. p. 168 seq.

[4] Gregor. VII. l. vi. Ep. 13, p. 522.

[5] Cf. De Maistre, Du Pape, l. iii. Concl. p. 154 seq.

[6] Cf. Will, Victor. II. als Papst und deutscher Reichsverweser, reprinted from Hist. Pol. Blättern.

[7] Döllinger, Lehrbuch der Kirchengeschichte, ii. p. 189.

[9] Innoc. III. l. i. Ep. 302, 336, 343-345, 407, 408, 508, &c.

[10] Ibid. l. i. Ep. 10.

[10] Gregor. X. Ep. a. 1273, ad Guelfos Tusciae. Raynald. h.a. Cf. Joh. xxii. ib. a. 1322, n. 6 seq.

[11] Gesta Innoc. III. n. 127 seq. p. clxv. seq. Cf. l. vi. Ep. 66, 163, 166.

[12] Lingard, History of England, vol. iv. p. 72, German edition.

[13] Hugo Grotius, Pro Pace Eccles. t. ii. p. 659, ed. 1679: 'Quot dissidia sanata sint auctoritate Romanae Sedis, quoties oppressa innocentia ibi praesidium repererit, non alium testem quam eundem Blondellum volo.'

§ 8.

'There is something noble,' writes Cæsar Cantu,[1] 'in the idea of a defenceless priest, himself a stranger to worldly interests, watching over the contentions of princes or nations, and in a world ruled more by opinion than by political laws speaking of honesty and duty to those whose only law is caprice and might. Even if the reality did not exactly correspond to the ideal conception, still it must be allowed that the form of power wielded by the Church in the Middle Ages succeeded beyond all systems since contrived in maintaining a free and powerful confederacy between the nations of the West. The tyranny of the Popes, as it is called, humbled princes only in order to enlighten them, and never to degrade them. It would be folly to attribute the growth of the Papal authority to cunning and ambition; the Popes might have increased their possessions or their political power, as did other princes; but they forbore to do so, and never enlarged their territory an inch through the means usually employed by princes, namely, conquest. Unlike in character, in ability, and in inclination, they all strove to attain one and the same end, and differed only in the means of which they made use.'

In truth, the Popes, though of different nationalities, mostly Italian, but also German, French, Spanish, &c., sons of the poorest as well as of the most distinguished families, often weak and aged, by a rare exception in the strength of manhood, at one time men able and versatile in law and in diplomacy, at another, ascetics brought up in the cloister, now surrounded by tokens of homage and reverence, now visited with bit-

adversity and menaced by rebellious subjects,—still, in spite of all these differences, are alike in the guiding principle of their lives.[2] There, side by side with Hadrian IV., an aged Englishman of poor origin, we see Innocent III., in the freshness of youth, and sprung from the noble family of Conti. The long line of Popes rises before the mind, as they are impressed on the memory by the partly historical mosaics in the Roman Basilica of St. Paul; we recall the deep veneration with which they have not rarely inspired their most bitter opponents; we cast a glance at the 10,749 Papal Briefs collected by Ph. Jaffé, and reaching only up to the year 1198; then at the register of Innocent III., containing almost 3440 Briefs; the collection of Decretals and Councils, and the still imperfect collection of Bulls, and we ask ourselves what monarchy can point to rulers approaching them in the splendour of their line or in the magnificence of their deeds.

'In the higher interests of life,' continues Cantu, 'they one after another manifested the same unchangeable will, while in merely temporal matters they pursued a policy as fluctuating as is human nature itself; hence in the first case their power was irresistible, while in the second they were often scarcely able to defend themselves against the weakest of foes. Great and tumultuous nations, with dynasties equal in power to the Pope's, or kings greedy of conquest, robbed the Pope of his lands, and took possession of his person; but his voice sounded none the less terrible and awe-inspiring even to the remotest quarters of the world, and nations awoke to the consciousness that above the mighty of this world a power existed which had set a limit to their career of crime, and put a stop to the despotism in which sovereigns indulge only when they know there is no longer an authority above them.'

[1] Cantu, Weltgeschichte, book x. c. xv. vol. vi. P. i. p. 339, edition revised by Dr. Will, Schaffhausen, 1863.

[2] The venerable Peter of Clugny wrote to Innocent II. l. i. Ep. 1: 'Nihil nos a pastore, nihil a Petro, nihil a Christo, *quae omnia in te habemus*, separare poterit. *Et Petrus in carcere, Clemens in exilio, Marcellus in catabulo, non minus quam Laterani Ecclesiae praefuerunt* et oves Christi eis ut veris pastoribus obedierunt.'

§ 9.

The objection that such power is contrary to the spirit of the Gospel has often been raised, but never really made good.[1] Christ did not forbid the exercise of all authority to His followers, but only an authority of tyranny and violence, such as was exercised by the princes of the heathen.[2] His precepts (St. Luke xxxii. 25 seq.; St. Matt. xx. 25 seq.) apply not alone to the clergy, but to all the faithful: temporal rulers, just as much as spiritual, are forbidden to govern tyrannically, as did the princes of the heathen; all Christians, in dealing with those subject to them, are to exercise humility and mildness; he who is in authority is to look upon his office as a service; to rule is to tend a flock (pascere), not to domineer (dominari).[3] This was ever the interpretation of the Fathers.[4] The Popes themselves looked upon their exalted power not as a dominion, but as a servitude; not as a personal gain, but as a heavy burden; they kept before their eyes the words of Scripture (St. Luke xxii. 25 seq.).[5] Precisely similar were the words of St. Bernard to Eugenius III., when he told him that his duty was to serve rather than to rule; that he was not a ruler, but a steward bound to render strict account;[6] that he was placed over others, but only to labour more heavily, like the farmer who has to root out weeds and sow good seed; that the words of Jeremias i. 10 apply to him;[7] that he must everywhere scare away evil beasts;[8] that he was the rod of the mighty, the hammer of tyrants, the father of kings;[9] he moreover recognises in the Pope one who presides over princes, the ruler of bishops, the regulator of empires and kingdoms.[10] The saint does not consider that in this the least injury is done to the coördination of the two powers, which he so beautifully describes in the following words[11]: 'Kinghood and priesthood could not have been united in a more lovely or more lovable form, or at the same time in a union closer and firmer, joining them completely in one, than was the case in the person of our Lord, where the two were equally united, since in His human nature He became at once our priest and our king. But this is not all: He has moreover united the two by a close

bond in His body, that is in the Christian people, of which He is the Head, so that this race of mankind was called by the apostle a chosen generation, a kingly priesthood (1 St. Peter xi. 9). That which God has united let not man put asunder; the two are to be united in their views, as they were in their origin; they are mutually to cherish and defend each other, mutually to bear one another's burdens.'[12]

[1] Cf. Bianchi, t. iii. l. i. c. i. § 8, n. 5-9, pp. 82-86. M. Gerbert, de Legit. Eccl. Pot. l. i. c. ii. § 1, n. 6, p. 70 seq.

[2] The κατακυριεύειν and κατεξουσιάζειν express this clearly, as, following Erasmus, Fritzsche, Meyer, and K. B. Hase (H. Stephani, Thes. v. κατακυριεύω) remark. Josue xv. 16 has κατακυριεύειν—Latin, percutere. Cf. Joh. Sarisb. Polycr. l. viii. c. xxiii. Innoc. III. serm. 2, in Annivers. Consecr. Petrus Comestor. c. cxcv., in Evangel.

[3] 1 St. Peter v. 1 seq. ποιμαίνειν is opposed to κατακυριεύειν. In other places pascere=regere, as appears from comparing the Bible passages in the Greek, Hebrew, and Latin: Ps. lxxvii. 70, 71; Ps. lxxix. 1, 2; Ps. ii. 9, cf. Apoc. ii. 27; xix. 15; Mich. v. 2, cf. Matt. ii. 6; 2 Kings v. 2; Ezech. xxxiv. 23; Isaias xliv. 28; 1 Paral. xvii. 6; Jer. xxiii. 2, 4; Acts xx. 28; Ps. xxii. 1. Thus in Homer, Il. ii. 85, 243, the king is spoken of as ποιμένα λαῶν.

[4] Chrys. in Matt. hom. 65, al. 66, n. 4 (Migne, lviii. 622). Bernard. de Consid. l. ii. c. vi. n. 10, p. 748. Cf. Petrus Bles. de Instit. Episcopi; Migne, cclvii. p. 1103.

[5] Innoc. III. l. vi. Ep. 229, p. 259; Alexio Imp. Cpl. (1203): 'Hoc autem [what he had said of patrocinium] dicimus, non ut ambitiose dominium affectemus, sed ut officiose ministerium impendamus, ejus exemplo, qui non venit ministrari, sed ministrare, nec ut dominemur in clero, sed forma gregis efficiamur ex animo; quia *principes gentium dominantur eorum*, et qui potestatem habent inter eos, benefici vocantur, inter discipulos autem Christi *non sic; sed qui major est* inter eos, *omnium servus existit et qui praecessor tamquam sit ministrator* (S. Luc. xxii. 25, 26).'

[6] De Consid. l. ii. c. vi. n. 10, 11, on the texts quoted: 'Planum est, quod Apostolis interdicitur *dominatus*; ergo et tu tibi usurpare cave aut dominans Apostolatum aut Apostolicus dominatum. Planum est quia ab utroque prohiberis; si utrumque similiter habere voles, perdes utrumque. Alioquin non te exceptum illorum numero putes, de quibus conqueritur Dominus dicens: Ipsi regnaverunt, et non ex me, principes exstiterunt, et non cognovi (Ose. viii. 4). Forma Apostolica haec est: *dominatio* interdicitur, indicitur *ministratio*. N. 12: Exi, O Eugeni, exi in mundum. Ager enim *mundus est*, ipse tibi creditus est. Exi in illum, non tamquam dominus, sed tanquam villicus, videre et procurare unde exigendus es reddere rationem.'

[7] L. ii. c. vi. n. 9: 'Factum te superiorem dissimulare nequimus, sed enim ad quid, omnimodis attendendum. Non enim ad dominandum opinor. Nam et propheta quum similiter levaretur, audivit: *ut evellas et destruas, et disperdas et dissipes, et aedifices et plantes*. Quid horum fastum sonat?

Rusticani magis sudoris schemate quodam labor spiritualis expressus est. Et nos ergo ut multum sentiamus de nobis, impositum senserimus *ministerium non dominatum* datum. Disce exemplo prophetico praesidere, non tam ad imperitandum, quam ad factitandum *quod tempus requirit;* disce sarculo tibi opus esse, non sceptro, ut opus facias prophetae. Et quidem ille non regnaturus ascendit, sed exstirpaturus.' From this the author of the writing de Postestate Papae (in the Appendix to Dupuy, Hist. du Différend) deduces a superioritas quantum ad officium praedicationis et correctionis in spiritualibus, non autem quantum ad dominium alicujus jurisdictionis in temporalibus; but this last even the Popes have never claimed, as has been falsely supposed.

[8] Bern. l.c. n. 13: 'Si cor movisti, movenda jam lingua, movenda est et manus. *Accingere gladio tuo, gladio spiritus, quod est verbum Dei.* Glorifica manum et brachium dexterum in faciendo vindictam in nationibus, increpationes in populis, in alligando reges eorum in compedibus et nobiles eorum in manicis ferreis (Ps. cxlix. 7, 8). Si haec facis, honorificas ministerium tuum et ministerium te. Non mediocris est iste principatus; exturbare est hoc malas bestias a terminis tuis, quo greges tui securi in pascua educantur.' John of Paris also appeals to this passage (ap. Natal. Alex. H. E. saec. 13 et 14, diss. 9, a. 2, n. 13, t. xvi. pp. 328, 329), and remarks on Jer. i. 10, that according to some the words are said in persona Christi, according to others de persona Jeremiae, but that the latter dethroned no king, but was set over people and kings, annunciando et praedicando vera, as in Ps. ii. 6; that the words are used non de evulsione et destructione regum mundi et subrogatione aliorum, sed de destructione vitiorum et plantatione fidei et morum. . . . Hoc magis faciunt sacerdotes de fide et moribus respondendo, quam potentia saeculari dominando. But everything essentially depends upon the judicare de peccato, of which alone there was question here, and not of dethronement. And it was precisely the judicare de peccato which St. Bernard defended. 'In criminibus,' he says to the Pope, 'non in possessionibus potestas vestra' (l. i. c. vi. n. 7).

[9] S. Bern. l. iv. c. xxi.: 'Ultor scelerum, virga potentium, malleus tyrannorum, regum pater . . . . postremo Deus Pharaoni.' Cf. Bianchi, t. ii. l. v. § 12, n. 5, 6, p. 326 seq.

[10] On the elevation of his scholar Eugenius, St. Bernard (Ep. 237) wrote to the cardinals, and expressed his astonishment at the election of this monk: 'Ridiculum profecto videtur, pannosum homuncionem assumi ad praesidendum principibus, ad imperandum episcopis, *ad regna et imperia disponenda.* Ridiculum an miraculum? Plane unum horum. Non nego, non diffido posse fuisse hoc etiam opus Dei, qui facit mirabilia magna solus.' Abbé Leroy, in a note to Bossuet, P. i. l. iii. c. xv. p. 307, seeks to weaken these words, the meaning of which is urged by Bianchi, l.c. n. 3; Gosselin, ii. 239 seq. explains: 'In so far as the Pope, through advice and admonition, has power to dispose of the material sword, he has also power to dispose of empires and kingdoms.' Even if the aforesaid expression is hyperbolical, this interpretation is evidently not strong enough.

[11] S. Bern. Ep. 244, c. i. pp. 440, 441, ed. Migne.

[12] Cf. Bern. de Consid. ii. 8; Alvar. Pelag. de Planctu Eccl. l. i. c. xiii.

§ 10.

It cannot be denied that in the Middle Ages the power of the Popes (and also of Councils) was great and extensive, but it did not spring up all at once from the earth, nor was it won by a bold and sudden stroke. 'The Popes,' says Phillips, 'did not then (in the Middle Ages) for the first time become the successors of St. Peter; they did not then for the first time receive the power of binding and loosing, or the office of supreme teacher and of king; but then it was for the first time that St. Peter in his successors could fully enforce upon the whole Christian community, *voluntarily subject to him in Christ*, the obedience which he could claim as a gift from our Saviour, given in reward of his love.'[1] The principle itself of the subordination of the temporal to the spiritual power was not new, but the forms merely in which that principle was put forward, and these were only new in part. In the Middle Ages the religious principle was applied to all the relations of human life, social, civil, municipal, and domestic, with the best result, while ill-success chiefly ensued when this principle was applied wrongly, perversely, or not at all. Had the same course been continued, had every separate part of the great edifice been perfected, and at the same time had every material improvement been made use of, which was put at our disposal by newly-discovered countries and routes, by progress in the natural sciences, by researches into subjects formerly little cultivated, and by the extension of trade and industry, and, at the same time, had the ancient principles of religion and morals been left unassailed, Christian nations would have been preserved from numberless dissensions and troubles, and without prejudice to their moral welfare would have attained to a high grade of material prosperity.[2] But ancient traditions were cast aside, the principle of authority was assailed, and the age of revolution introduced; society sank back into heathenism; political, social, and domestic life were withdrawn from the influence of Christianity; that was put asunder which up till then had been closely united—politics from morals, morals from religion, education, the State,

and the family from the Church. The era of revolution is far from being at an end, as so many imagine; on the contrary, we are still in the very midst of it; we are tasting of its fruits, and ever dropping its seeds into the well-prepared soil, from which again fresh trees of the same species spring up.

In the mean time some will never forgive the Popes of the Middle Ages for dethroning kings and princes, and releasing their subjects from their oath of allegiance. The question is never asked, How often, on what grounds, and with what right this was done? the act is in itself condemned. But on closer examination, if we consider the legal relations of all the parties concerned, and take into account the public law of the mediæval States, the prevailing acceptation of the oath of allegiance, which was never given unconditionally and to hold good in any event; if, moreover, we remember the civil and spiritual laws which worked together in producing such a state of things, the fact which seems to be so strange becomes clearly intelligible.

Let us, in the following pages, enter upon this examination.

[1] Phillips, Kirchenrecht, iii. § 126, p. 181 seq. Cf. also Christophe, das Papsthum im 14 Jahrhundert, trans. by Ritter, vol. i. p. 38 seq.

[2] Cf. Balmes, vol. iii. c. lxxi. seq. p. 387 seq.

Part III. Excommunication and its Consequences in the Middle Ages.

§ 1. Temporal effects of public penance and of excommunication. § 2. Exclusion from public offices. § 3. From military service. Exceptions. § 4. Intercourse with the excommunicated. § 5. Discipline mitigated, § 6. or increased. § 7. Kings also liable to excommunication. § 8. Release from the oath of allegiance. § 9. Can the Church dispense oaths? § 10. Who can dispense oaths? § 11. Examples. § 12. Principles relating to dispensation from oaths. § 13. More recent times. § 14. Deposing rare. § 15. The eleventh Ecumenical Council. § 16. The first Council of Lyons. § 17. Councils of Constance and Basle. § 18. Councils pass the same sentences as Popes. § 19, 20. Objections. § 21, 22. Answers.

§ 1.

In the Middle Ages it was natural, from the state of society, that public ecclesiastical penance and the penalty of excom-

munication should involve temporal consequences. In the ancient Church all grave crimes were punished by heavy public penances, to which many sinners submitted voluntarily.[1] Commonly in the West, from the fourth to the eighth century, though the rule was not everywhere enforced with equal severity, persons performing such penances were forbidden to solemnise marriage, or to live in wedlock, to hold public offices, especially the office of judge, to serve in war, and to take holy orders.[2] In later times also, when public penances were becoming more and more rare, these precepts held good in the case of the more grievous sins:[3] persons guilty of certain notorious crimes were to be compelled by excommunication to submit to public penance; in case of refusal the temporal arm was to force them to obedience; indeed dukes and earls who refused to assist in this were punished with excommunication, with temporal penalties, and even with the loss of their rank.[4] The Council of Paris (846) punished sacrilege, rape, and adultery with public penance;[5] the Council of Mainz (847) declared: 'Whosoever has sinned publicly shall do penance publicly;'[6] so also said the Council of Pavia (850), and it moreover declared that no excommunicated person might hold a state office or perform military service;[7] the Council of Worms (868) forbade those guilty of the murder of priests and other crimes to bear arms.[8] By decree of the Council of Tribur (895) any person excommunicated by the bishop, and refusing to do penance, was to be seized and taken before the king for punishment.[9] Earlier Councils enjoined that any one returning to worldly business, after having been numbered amongst the penitents, was not to be admitted to Communion until he once more went back to the performance of the penance he had vowed.[10]

[1] Joh. Morinus, Com. Hist. de disciplina in admin. Sacr. Poenitent. olim observata, Paris, 1651, l. v. 18 seq. 24; l. vii. c. iv. seq. Frank, Bussdisciplin, Mainz, 1867, p. 444 seq.

[2] Leo M. Ep. 167, ad Rustic. Narbon. c. 10-13. Cf. c. 8, d. 5, de Poen.; Siric, Ep. ad Himer.; Taracon. c. 5; Nicol. I. Ep. 19, ad Rodulf. Bituric. Conc. Arelat. ii. 443-452, c. 21, 22. Aurel. iii. 538, c. 24, 25. Barcinon. i. 540, c. 6, 7, 8; ii. 599, c. 4. Tolet. iv. 633, c. 54, 55; vi. 638, c. 7; xii. 681, c. 2 (Hefele, Conc. ii. p. 283 seq. 755, 757; iii. pp. 56, 78, 83, 287).

[5] Capitul. l. vi. n. 71, 98.
[6] Capit. Tribur. 822, n. 6, p. 629, ed. Baluz.; Capit. l. v. n. 300, p. 885; vii. n. 258, 432, 433.
[7] Can. 61, 64, 69 (Hefele, iv. pp. 111, 112).
[8] C. 31 (Hefele, l.c. p. 122).
[9] C. 6, 12 (Hefele, p. 169).
[10] C. 26 (Hard. v. 741; Hefele, p. 356).
[11] C. 3 (Hefele, p. 532).
[12] Conc. Aurel. i. 511, c. 11; Epaon. 517, c. 23 (Hefele, ii. pp. 645, 664).

§ 2.

How widespread was the custom, that penitents were debarred from holding public offices, is shown by the following fact amongst others. At the instigation of the ambitious Count Erwig, King Wamba of Spain, after being deprived of his senses, had his hair shaved, like a dying man, and was placed in the rank of penitents, so as to render it impossible for him to reign longer. Wamba, although he regained his senses, remained a voluntary penitent, and was succeeded by Erwig, whom he himself recommended, and who was acknowledged by the Council of Toledo (681), after an examination of the testimony of the nobles.[1] The case of Lewis the Pious (833) also illustrates the discipline of that day. Lewis had been proclaimed sole emperor by his adherents, and his son Lothair, having got him into his power, wished to make it impossible for him ever to reign. As early as 830 the demand had been made that the aged emperor should suffer himself to be shorn, and should enter a monastery; now, on his knees before the high altar of the church of St. Medardus at Soissons, he was forced to read publicly a list of his sins, to exchange his sword and his armour for the dress of a penitent, and with the usual imposition of hands by the bishop to receive a penance;[2] he did not however become a monk. All this was approved by the bishops in the Council of Compiègne. The sentence was without doubt most unjust, and the whole proceeding wicked,[3] and as such it was afterwards recognised and declared null and void; but this did not alter the conviction that the imposition of a public penance was the most certain and legitimate means by

which a prince could be deprived of the throne. Later (867), the Council of Troyes wrote as follows on this subject to Pope Nicholas I.: 'By the permission of God, the just Judge, and through the influence of the malice of the devil, the sons of the pious Emperor Lewis of worthy memory, together with a party of evil-minded men, but without the *counsel and consent of Pope Gregory* (IV.) (whom Lothair had caused to leave Rome under pretext of keeping the peace), robbed their father of the empire, and took him prisoner as far as the town of Soissons. And to make people believe that he was justly deposed from the throne, certain crimes were devised against him, for which they pretended that by the sentence of *certain bishops*, amongst whom it was said Ebbo (of Rheims) was specially active,[4] he was on pretext of public penance shut out from the threshold of the Church. Ebbo afterwards published a document, in which he acknowledged that the ignominious deposition of the emperor had been neither canonical nor just.'[5] The deed was designated as materially but not formally contrary to justice. When the aged emperor was set free by his adherents, and was begged to reign once more, he said: 'The Church cast me down, the Church must raise me up again; the bishops disarmed me, and the bishops must restore to me my weapons.' This was done at the assembly of Diedenhofen in February 835. Each bishop had to read aloud his written opinion on the restoration of Lewis; they all expressed themselves in his favour, even Ebbo himself, who at the same time acknowledged his own guilt. In the cathedral of Metz it was proclaimed that Lewis had been unjustly deposed; he was reconciled by the imposition of hands and by prayers said over him, and then the imperial crown was replaced upon his head.[6] The canon which forbade public penitents to exercise their offices was never called in question, but only its application to Lewis for crimes, half of which were unproved, and half long ago atoned for.[7] It is objected that Lewis had before, in 822, done penance at Attigny, without being considered to have thereby lost his right of reigning.[8] But his penance at Attigny was voluntary, and not imposed according to the form of the canon for convicted criminals;

Lewis was then reconciled to his sons, acknowledged himself to be a sinner, gave copious alms, and promised to abolish all abuses; he begged for absolution and the imposition of a penance, but he did not shave his head or renounce the use of weapons, or receive the laying on of hands, as was usual with penitents,[9] and as was done in 833, when a formal episcopal sentence had been passed upon him. The two ecclsiastical acts of 822 and 833 were totally distinct in signification and in effect.[10] The bishops assembled at Compiègne considered the sentence passed upon Lewis as an exercise of their authority.[11]

It is further objected that the deposition of Lewis had taken place before the assembly met at Compiègne, and was looked upon by the bishops as already accomplished.[12] This may be fully granted;[13] but the deed of violence had to receive á legal form, and to be made to a certain degree legitimate and irrevocable by the Church; just as Lothair afterwards sought to justify himself by the sentence of the bishops,[14] and the learned Agobard of Lyons did all in his power for this same end.[15] When Lewis was reinstated the bishops who were implicated were charged with abuse, but not with usurpation, of power. It is indeed said that at Compiègne Lothair alone was styled emperor, and not his father;[16] but it must be remembered that Lothair had been joint emperor since 817-818, and long bore the imperial title,[17] which was not then given him for the first time; and moreover that though the government of the empire had been entirely withdrawn from the old emperor, Lothair needed a more complete justification in the eyes of the people, and hoped to obtain it from the transactions at Compiègne, which were therefore published with the superscription, *exauctoratio Ludovici*. The principle that canonical penance deprived him of the throne comes out clearly enough.[18]

[1] Conc. Tolet. xii. c. 1. Lucas Tudel. ap. Morin. l.c. l. v. c. 7, n. 2 seq.; c. xxi. n. 5. Hefele, iii. pp. 286, 287.

[2] Hard. Conc. iv. p. 1382. Hefele, iv. pp. 72, 78 seq.

[3] So says not only Bossuet (Defens. P. i. l. ii. c. xxi. p. 229 seq. and Natal. Alex. H. E. saec. 9, diss. 11, n. 1), but also Bianchi (t. i. l. iii. § 3, p. 458 seq.), Mamachi (Antiquit. t. iv. p. 189), and earlier, Baron. (a. 833, t. ix. p. 805).

[4] Theganus reproaches him with: 'Tu eum falso judicio voluisti expellere a solio patrum suorum.' Walafrid Strabo, in his poem, represents the restitution of Lewis as most difficult: 'Nam quid erat moesto tam desperabile regno, quam sua depositis iterato posse venire sceptra?'

[5] Hard. v. 682.

[6] Hefele, iv. pp. 79, 81 seq.

[7] Thus Astron. in Vita Ludov. n. 49: 'Ut *pro his, de quibus jam poenitudinem gesserat imperator*, iterum publica poenitentia, armis depositis, *irrevocabiliter*, quodammodo Ecclesiae satisfacere judicaretur, quum ne forenses quidem leges contra unam culpam semel comissam *bis* invehant vindictam et nostra lex habeat, Deum non judicare bis in id ipsum. . . . Ad judicatum ergo cum absentem et inauditum nec confitentem *neque convictum* . . . . arma deponere et ante altare ponere cogunt.' Cf. Flodoard, a. 834; Annal. Bertin. a. 833; Fuld. a. 834 (Rer. Gall. vi. ed. 1749, pp. 214, 195, 210); Narrat. Cleric. Rhemens, a. 833; Vita Ven. Wallae Abb. Walafr. Carm. (ib. pp. 270, 292 seq.).

[8] Bossuet, l.c. p. 230.

[9] S. Cyprian, Ep. 15-17, ed. Oxon. Conc. Agath. 506, c. 15 (Morin. l.c.). Aubespine, in Optat. Milev. Observ. v. p. 165, ed. 1676.

[10] Bianchi, l.c. n. 3-5, pp. 464-469. Mamachi, l.c. pp. 191, 192.

[11] Hard. iv. 1379: 'Et hoc . . . . manifestare *juxta injunctum nobis ministerium* curavimus, qualis sit vigor et potestas sive ministerium sacerdotale et quali merentur damnari sententia, qui monitis sacerdotalibus obedire noluerint. Deinde tam memorato principi quam cuncto ejus populo denunciare studuimus, ut Domino devotissime placere studerent et in quibus eum offenderint, placare non different.'

[12] Bossuet, l.c. p. 231.

[13] Cf. Nithard, Hist. l. i. p. 69, a. 833; Annal. Bertin. h.a.; Thegan. de Gest. Lud. p. 82; Astron, h.a. p. 114.

[14] According to Astron, he declared: 'Nullum plus se compati paternae calamitati vel congaudere prosperitati, nec debere sibi imputari culpam senioris sibi oblati, quum ipsi eum destituissent ac prodidissent, neque carceralis custodiae naevum sibi jure inuri, quum constaret hoc actum *judicio episcopali*.'

[15] Agobardi, Opp. ed. Migne, t. civ. p. 287 seq.

[16] Agobard in the Chartula Porrecta Lothario speaks of the 'ignavia Ludovici venerandi, quondam imperatoris;' in the documents of Compiègne mention moreover is made of 'regnum D. Ludovico Imperatori a Deo ad regendum sub magna pace commissum.' Besides Lewis is there called 'princeps, venerabilis vir.'

[17] Lothair's reign is reckoned in various ways: sometimes from his joint government, sometimes from his coronation by Paschal I., sometimes from the date of his Italian kingdom, sometimes from the death of his father.

[18] Bianchi, n. 7, pp. 471, 472. Mamachi, p. 194. Phillips, iii. § 122, p. 97 seq.

§ 3.

After the ninth century certain exceptions were made to the rule that penitents should not return to military service.[1] Pope Nicholas I. gave the Archbishop of Bourges power to dispense on this point, and in another case he permitted arms to be borne against the heathen in urgent necessity.[2] A later Council at Rheims, which enjoined canonical penances for those taking part in the battle between King Charles and his rival, King Robert, dispensed from the performance of penance, amongst other times, during sickness and military service.[3] Gregory VII. strove to maintain the ancient discipline, together with the mitigations of Nicholas I.; soldiers performing penance were to lay down their arms, unless they were defending the cause of justice by the advice of the bishop.[4] In the mean time other works of satisfaction became more and more frequent, and the Council of Clermont (1095) permitted a crusade undertaken with pure intention to take the place of every penance.[5] From that time princes who were conscious of heavy guilt often voluntarily took up the cross in expiation, as for example King Lewis VII. of France (1145).[6]

[1] Raban. Maur. Ep. ad Heribald. Autissiod, c. xvi. p. 498 seq.
[2] Nicol. I. Ep. 19, al. 39, ad Rod. Bitur. c. iv.; Ep. 17, al. 5, ad Rivol. Ep.
[3] Conc. Rhem. a. 924 (Labbé, ix. p. 581).
[4] Conc. Rom. Nov. 1078, c. 5 (Labbé, x. p. 373; Migne, PP. Lat. cxlviii. p. 801; Hefele, v. p. 114).
[5] Can. 2 (Hefele, l.c. p. 298).
[6] Hefele, p. 442 seq.

§ 4.

It is a fact of still greater importance that, from the most ancient times in the Church, excommunicated persons were not only deprived of spiritual goods in the external communion of the Church, but were moreover forbidden certain acts of intercourse with their fellow-men, such as intimate converse with them, embracing them, eating with them, &c. Intercourse with excommunicated persons was commonly punished with excommunication,[1] by the later laws with the lesser excommunica-

tion if it were not a case of complicity in crime.[2] When public penances were disused, and ecclesiastical penalties, especially censures, were more commonly employed against the passions and violence both of the higher and lower classes, sovereigns themselves looked upon them as the most efficient means of checking the prevailing licentiousness, and attached to these penalties effects on civil life analogous to those effects which they had long been pronounced to have on the spiritual life.[3] As early as 595 King Childebert ordered that any one who made an incestuous marriage, and by thus disobeying the bishop incurred excommunication, was to be driven from the king's palace and deprived of his property in favour of his lawful relations.[4] The Council of Verneuil, assembled by King Pipin in 765, directed that if any cleric or layman guilty of incest, and refusing amendment in spite of the admonition of the bishop, were in consequence excommunicated, all those who knowingly held intercourse with him should incur the same excommunication. The effect of this excommunication was, that such a one might not enter a church, or eat and drink with Christians; no one might accept a gift from him, kiss him, pray with him, or salute him, until he had been reconciled by his bishop. If any man considered himself unjustly excommunicated he might apply to the metropolitan, but was obliged, in the mean time, to obey the sentence. If any one treated the whole affair with contempt, and the bishop failed to move him to amendment, he was to be punished with exile, by sentence of the king.[5] In the Capitularies excommunicated persons were deprived of their goods and possessions, and if for two years they stubbornly refused to make satisfaction to the Church, or despised her penalties, they were sentenced to transportation or banishment.[6] Lothair I. commanded that such obstinate sinners should be punished with imprisonment;[7] Arnulf (895) ordered them to be brought by the counts before the judgment-seat of the king.[8] In England King Etheldred (1008) forbade the excommunicated, until their pardon had been pronounced, to dwell in the neighbourhood of the court; and King Canute afterwards condemned to death and confiscation of property those who

gave shelter to an excommunicated or outlawed person.[9] A London Council (1151) renewed the old law, that whoever remained in a state of excommunication a whole year became completely infamous.[10]

As had been the case in earlier ages,[11] the temporal arm was employed against those who were obstinately impenitent. John of Salisbury, when Bishop of Chartres (1180), relates in a public letter how King Henry of England compelled the excommunicated Count John of Vendôme to seek reconciliation with the Church.[12] As a general rule, excommunicated persons who were not reconciled within a certain space of time forfeited their civil rights, and incurred political proscription.[13] They were considered incapable of appearing in court as plaintiffs or witnesses, that thus they might be moved to self-examination and repentance for their sins.[14] Peter, King of Aragon, directed (1210) that those who remained under anathema four months should pay a fine of 400 shillings, the same sum after another four months, and that at the end of the year they should become outlaws and infamous.[15] According to the fourth Lateran Council (1215), canon 3, and the laws of Frederick II. (1220), those who made no satisfaction after one year of excommunication were infamous, and incapable of holding any office or dignity;[16] indeed, by the laws just named, and by the ancient code of Swabian law,[17] the civil judge had power to proscribe an excommunicated person as an outlaw, if he remained under anathema six weeks and a day. Excommunication and political proscription were deemed precisely analogous; the one followed upon the other. Neither the outlawed nor the excommunicated could appear in court as plaintiffs, though they were forced to suffer actions to be brought against themselves.[18] According to several Councils of the thirteenth and fourteenth centuries, any person remaining a year under anathema was to be forced by the State, especially by means of confiscation of property, to reconcile himself with the Church;[19] some Councils specified the penalty to be loss of property;[20] others settled certain temporal punishments, especially fines, for those who remained even a short time under anathema.[21] The Council of Cognac (1238)

inflicted a fine of ten pounds upon those remaining forty days under anathema; the Council of Beziers (1246) inflicted fines increasing to the entire loss of property; the Council of Avignon (1326) also imposed fines, and threatened those judges who should neglect to act.[22] According to a Council of Avignon (1209) any one remaining under anathema for six months could be absolved by the Pope alone.[23] Some Councils decided that he who persisted in a state of excommunication a year should forfeit all rights of inheritance, and only be readmitted to the sacraments after performing severe public penance;[24] others, that he should be treated as a heretic, or as one suspected of heresy.[25] Together with these various directions, there was one universal rule, that as long as the excommunication lasted no intercourse was to be held with the person under anathema, except in order to bring him back to submission to the Church; no obedience was due to him,[26] neither was he entitled to administer any public office.[27]

[1] 1 Cor. v. 11; 2 Thess. iii. 14; 2 Joh. x. 11. Iren. adv. Haer. iii. 3. Ambros. Ep. 40, ad. Theodos. Synes. Ep. 58. Isidor. Hispal. in can. 18, c. xi. q. 3. Nicol. I. can. 3; ibid. can. ap. 11, 13 (al. 10, 12). Antioch. c. 2. Carth. 387-390, c. 7 (Hefele, i. 777, 494; ii. 46). Conc. Tolet. i. 400, c. 15. Araus. i. 441, c. 11. Arelat. iii. 443-452, c. 49. Turon, 461, c. 8. Aurel. i. 511, c. 11. Antisidor. 578, c. 38, 39. Reg. Chrodegangi, c. 20. Conc. Hohenaltheim, 916, c. 9 seq. (Hefele, ii. pp. 67, 276, 284, 568, 645; iii. p. 42; iv. pp. 20, 557). Cf. Bingham, Orig. et Ant. t. vii. l. xvi. c. ii. § 1; Selvaggio, Ant. l. iv. c. i. § 5; Bossuet, Defensio, l. i. sect. 11, c. xxii. p. 155 seq.; Kober, Kirchenbann, p. 376 seq.

[2] Can. 3, 19, c. xi. q. 3, c. A nobis, 2, de Except. ii. 25; c. 29, 30, de Sent. Excom. v. 39, c. 3, h.t. in 6.

[3] Cf. Bossuet, l.c. c. xxii. p. 157, § Pertinet etiam.

[4] Childeb. Constit. n. 2. Baluz. Capitul. t. i. p. 17.

[5] Conc. Vermer. can. 9 (Mansi, xii. p. 578 seq.). Baluz. l.c. pp. 172, 836. Cf. Hefele, iii. p. 551.

[6] Capitul. l. v. 300; vii. 215. Baluz. t. i. pp. 885, 1071.

[7] Const. a. 825, c. i. (Pertz, l. iii. p. 248).

[8] Hard. vi. 440.

[9] Canciani, Barbar. Leg. Ant. t. iv. pp. 291, 309.

[10] Hefele, v. p. 464. Cf. letter of St. Thom. à Becket to Card. Albert, 1170, Thom. Cant. l. v. Ep. 22, Bouquet, Recueil, xvi. 419, Ep. 258.

[11] Kober, Kirchenbann, p. 439. The petition of the Catholics of Antioch to the Emperor Aurelian (Eus. H. E. vii. 30) is brought forward as proof, also can. Antioch, 341, n. 5 (Hard. i. 434), and African canons

(Hard. i. 964, seq. 889). For examples in ninth century, vide Hefele, iv. pp. 52, 112.

[12] Joh. Saresb. Ep. 326, pp. 376, 377: 'Tandem cum D. Anglorum rex doleret illum tamdiu excommunicationi subjacere, regiam adjecit manum, eundem compellens, ut exhibitione justitiae se a sententia excommunicationis, qua tenebatur, faceret absolvi.' The custom of imprisoning persons obstinate under excommunication by command of the king, in order to force them to submission, was maintained by the English Councils, and their release was forbidden until satisfaction had been made; *e.g.* Council of Lambeth, 1261, can. 3; of London, 1342, c. 13 (Hefele, vi. pp. 59, 590). For the same end the Council of Gran in Hungary (1114), can. 34, required that the names should be notified to the king of those excommunicated (Hefele, v. p. 290).

[13] Gaillard, Hist. de Charlemagne, t. ii. p. 124. Fleury, Hist. Eccl. t. xiii. disc. 3, n. 18; t. xvii. disc. 5, n. 13. Bossuet, l.c. et l. iii. c. iv.

[14] Ivo, Decret. l. xiv. c. 69, Ep. 186, ad Laurent. Opp. ii. p. 78.

[15] Hurter, Innoc. III. vol. iii. p. 114.

[16] Hefele, v. pp. 787, 816 seq. Pertz, Leg. iv. 236.

[17] Huillard-Bréholles, Diplom. i. p. 76 seq. Stolberg = Brischar, Kirchengeschichte, vol. iii. (new series, vii.) p. 43.

[18] Senkenberg, Corp. Jur. Germ. t. ii. Jur. Alam. c. iii. 127.

[19] Council of Taragona, 1233, c. 18; of Paris, 1248, c. 20; of Milan, 1287, c. 28; of Anfe, 1300, c. 7; of Trêves, 1310, c. 26 (Hefele, v. 918, 1025; vi. 227, 338 seq. 434). The Council of Cologne, 1266, c. 38, ordered the same, but enjoined a previous accusation before the Council for contempt of the Church's power of the keys (Hefele, vi. p. 83; Kober, l.c. p. 438).

[20] Council of Narbonne, 1227, c. 1; of Monteuil near Valence, 1248, c. 13; statute of Lewis IX. 1229 (Du Cange, Glossar. v. Excom.). Hefele, v. pp. 838, 872, 1029.

[21] *E.g.* Council of Trêves, 1238, treating of those who remain six weeks under anathema (Hefele, v. p. 938 seq.).

[22] Hefele, l.c. p. 1019. Hard. vii. 319, 413, 1509. Kober, p. 434 seq.

[23] Can. 13 (Hefele, v. p. 750 seq.).

[24] *E.g.* Council of London, 1278, c. 6 (Hefele, vi. p. 164).

[25] Council of Bordeaux, 1263, c. 2 (Hard. vii. 553; Hefele, vi. p. 72); Council of Compiègne, 1304, c. 4 (Hard. l.c. p. 1276; Hefele, p. 355); of Pressburg, 1309, c. 7 (Hefele, p. 427); Kober, l.c. p. 437 seq.

[26] Urban II. can. 5, c. xv. q. 6. Jaffé, Reg. n. 4291, p. 474.

[27] Innoc. III. 1213, l. xvi. Ep. 116, p. 913: 'Cum excommunicatorum communio sit aliis interdicta, ipsi officia publica exercere non debent.' Cf. ib. Ep. 94, p. 894.

§ 5.

This strict discipline was on the one hand mitigated, on the other hand rendered more severe. Gregory VII. in his Lenten Council at Rome (1078) modified the prohibition of intercourse

with excommunicated persons, so that their wives, families, and servants, indeed all whose presence would not strengthen their evil dispositions, were permitted to be with them. Travellers who came across excommunicated persons might accept a gift or buy from them, and all were permitted to give them enough to support life.[1] This decree was inserted in the book of canon law,[2] was only slightly modified by Urban II.,[3] and was recognised by Innocent III.[4] The Council of Piacenza (1095) recognised as within the pale of the Church, and admitted to the reception of the Holy Eucharist, those who came only into personal contact with the excommunicated, but took no part in their worship (that of the Henrician party). The Council of Tours (1236) merely inflicted fines on those Christians who held avoidable intercourse with persons under anathema.[5] The thirteenth General Council (1245) maintained only the penalties against those who had taken part in the offence, and forbade the infliction of the greater excommunication except after canonical warning upon those who held intercourse with persons under anathema by word, or in any other way for which the threatened penalty was the lesser excommunication; still if this intercourse tended yet further to harden the guilty man, it might be punished in the same manner as complicity in crime if canonical warning were given beforehand.[6] This warning, which was also insisted upon by succeeding Popes, was, however, declared by Gregory X. in the fourteenth General Council (1274), c. 29, to be canonical only when the persons concerned are mentioned expressly by name;[7] this must be done three times, or once in a peremptory manner. It was afterwards declared by Martin V. that those only who were excommunicated publicly and by name were to be avoided (excommunicati vitandi).[8]

[1] Hard. vi. 1578. Migne, PP. Lat. cxlviii. p. 798. Hefele, v. p. 108.

[2] Grat. can. 103, c. xi. q. 3.

[3] Urban. Ep. ad. Genebald. (Hard. vi. p. 1651 seq.).

[4] Innoc. III. l. i. Ep. 381, p. 361, ed. Migne: 'Nullus omnino nominatim excommunicato scienter communicare tenetur, nisi quaedam personae, quae per illud Gregorii P. capitulum *quoniam multos* specialiter excusantur.'

[5] Hefele, v. pp. 194, 931.

[6] Hefele, v. p. 991 seq. This decree is c. iii. de Sent. Excom. v. 11 in 6.

[7] C. 9, de Sent. Excom. v. 11 in 6 (Hefele, vi. p. 137).

[8] Const. Ad evitanda scandala (Hard. Conc. viii. 892). Cf. Suarez, de Censur. disp. 9, § 2, n. 5; Pignatelli, Cosult. Canon. t. i. cons. 143, n. 4, p. 187.

§ 6.

On the other hand there was increased severity in the case of complete obstinacy on the part of the excommunicated (insordescentia). The sentence of excommunication was most solemnly renewed with ceremonies and words expressive of abhorrence and execration; for example, the burning tapers borne by the clergy were cast to the ground.[1] The expression 'anathema' was often, especially after the ninth century, used for this renewal of the sentence.[2] The consequences which, by spiritual and civil law, fell upon the incorrigibly obstinate were usually then pointed out as having actually come into force; such as the incapacity for public offices and loss of those already held, the cessation of all duty of obedience on the part of the subjects of the guilty person.[3] Thus Honorius III. declared in one of the decretals inserted in the book of canon law, that a count who remained in a state of excommunication over two years, despising the Church's power of the keys, and who, after a second warning, still refused amendment, forfeited his right to the obedience of his subjects, who were freed from their oath of allegiance to him as long as he remained excommunicated.[4] This was completely in accord with the decision of Innocent III., who had declared that those persons whom Gregory VII. had excepted from the usual rule not only had the right, but were moreover bound in duty, to render obedience to the excommunicated, and also to hold intercourse with them, as far as the excommunication alone was concerned.[5]

[1] Gratian, c. 106, c. xi. q. 3. Regino, de Eccl. Discip. l. ii. c. 409. Thus in 1031 the extinguishing of the tapers took place at the Council of Limoges (Hefele, iv. p. 661).

[2] Council of Paris, 846, c. 56; of Savonnières, 859, c. 9; of Troyes, 878, c. 1 (Hefele, iv. pp. 111, 198, 512); Pope Nicholas I. Ep. 7, et in Conc. Rom. 863 (cf. can. 2, c. iv. q. 1); Johan. VIII. c. 12, c. iii. q. 4; and else-

where. Thus Celestine III. c. 10, Cum non ab homine, ii. 1, de Jud.: 'Qui si depositus incorrigibilis fuerit, excommunicari debet, deinde contumacia crescente anathematis mucróne feriri.' The Pontificale Romanum also makes this distinction (Phillips, Lehrbuch der Kirchenrechte, § 189, p. 544, note.

[3] Kober, Kirchenbann, p. 403.

[4] C. 13, Gravem. v. 37, de Poenis.

[5] C. 31, Inter alia, tit. de Sent. Excom. v. 39, explanation of the words of the same Pope, quoted § 5 suprà. Those persons were understood who, ante prolationem sententiae excommunicationis, were bound to obey the excommunicated, neque postmodum ad contrarium tenentur. Still, travellers, pilgrims, merchants, were, except in case of necessity, to refrain from intercourse with those under anathema. It was 'in criminibus' alone that no one was to hold intercourse with them.

§ 7.

But kings and princes were no more exempt from excommunication than the rest of the faithful.[1] The duty of passing sentence upon them fell to Popes and Councils, and was a purely ecclesiastical act, completely within the sphere of the Church. The Gallican Dupin himself says: 'It seems to me that no doubt can be raised but that kings who are sinners or heretics may in this sense be pronounced unworthy of communion with the Church. For though they are monarchs and princes of the civil commonwealth, still they are merely simple members of the religious commonwealth, and must obey its laws, or be cast out from it; for no one is lord, no one is monarch over the Church, and no one is free from her laws. Therefore without doubt the prince who offends against the laws of Christ and of the Church may be considered and pronounced unworthy of the Church.'[2] As Christians, they are sons of the Church, not her rulers; subject to her laws, not raised above them. Protestants have also made use of this right, as, for example, the French Calvinists against Henry IV.;[4] and it was fully defended by Samuel Basnage.[5]

[1] The belief of the ancient Christians on this point is shown by Kober, p. 108 seq. Bossuet admits the proposition, P. i. l. i. sect. 2, c. xxi. pp. 154, 155.

[2] Dupin, de Ant. Eccl. Disciplina, dissert. 6, c. ii.

[3] Ambros. serm. de Basilicis. Joh. VIII. P. in c. xi. dist. 96.

[4] J. H. Boehmer, Jus Eccles. l. v. tit. 39, n. 40.

[5] Sam. Basnage, Annal. Politico-Eccles. ii. diss. 8, § 10.

§ 8.

On the other hand, deposition and the release of subjects from their oath of allegiance were distinct acts, which did not immediately and of themselves follow upon every sentence of excommunication, but had to be separately declared.[1] By the public law of Christian States, excommunication brought with it temporal consequences, differing only according to the length of obstinate resistance to the sentence, and it was considered monstrous that a Christian people should be ruled by a prince who was cut off, and remained cut off, from the Church; therefore to the sentence of excommunication might be added a declaration that those consequences were come into force which followed also by the *constitution of the State*.[2] In pronouncing a sentence of deposition, which was only done when all other means were exhausted, the Popes appealed not only to *divine, but also to human law*;[3] and this was done also by the most eminent writers on the effects of excommunication.[4] Since the Pope and the Council were the natural judges in all questions touching religion, it also belonged to them to point out to the people those princes who had fallen into heresy, or under the greater excommunication of the Church. This they could not do without observing and declaring that by the constitution and custom of their countries these princes had forfeited their right of governing, either for a time, or for ever, according to the state of the case. It was to the interest of the sovereign, and of the whole community, that such a declaration should not be left to be made by the people, or by the national assembly, which would have favoured every attempt at revolution,[5] or even by the bishops of the country in question alone, who were also subjects of the king, but should be reserved to the Pope and General Council. Even when it was supposed that the subjects of a prince excommunicated for apostasy from the Faith were at once and necessarily set free from his rule and from their oath of allegiance,[6] still a judgment to that effect was needed from the Pope, a *sententia declatoria criminis*, as in other cases also where the excommunication at once took effect by virtue of the

law (ipso jure); usually the loss of office was only added as an increase of punishment, and did not in fact follow upon every sentence of excommunication.[7] Besides this, the acts of jurisdiction of an excommunicated and deposed prince were declared null and void, as, for example, Innocent III. (1212) declared in relation to the acts of the deposed Otho IV. of Germany.[8] Such princes were no longer looked upon as lawful rulers, but as tyrants.[9] Even though strictly speaking deposition of the prince could only be effected by the combined action of the spiritual and civil law, still the same effect was at once produced by an entire release of the subjects from the oath of allegiance, in releasing from which the Church was completely within her own sphere.[10]

[1] Suarez, de Cens. disp. 15, sect. 6, n. 3: 'Ut excommunicatus princeps dominio et omni jure in subditos privetur, necesse est, ut speciali poena et sententia declaretur aut imponatur' (Gosselin, ii. p. 339).

[2] Cf. Phillips, Kirchenrecht, iii. § 125, p. 158; § 126, p. 190. For the Papal right of deposition the following are quoted: Bonavent. de Eccles. Hier. P. ii. c. i. (ed. Ven. v. p. 215); Raymund. de Pennaf. l. i. tit. de Haeret. § 7; Aug. Triumph. q. 46; Antonin. Sum. P. iii. tit. 22, c. iii. § 7; Petr. Palud. de causa immed. Eccl. pot. Ant. Aug. jur. Pont. vet. epit. tit. 16, ap. Roccaberti, iv. 206. Several German law-books and others, apud Friedburg, de Finibus, &c. p. 29, n. 5.

[3] Gregor. VII. Ep. ad princ. Germ. ap. Paul. Bernr. c. lxxviii.: 'Per quos .... eum secreto monuimus, ut poenitentiam ageret de sceleribus suis, quae quidem horrenda dictu sunt .... propter quae eum excommunicari non solum usque ad dignam satisfactionem, sed ab omni honore regni absque spe recuperationis debere destitui *divinarum et humanarum legum* testatur auctoritas.'

[4] Ivo Carnot. Ep. 186, Opp. ii. p. 78; Gosselin, ii. p. 104, n. 2. Cf. Suarez, Defens. Fidei, l. vi. c. iv: 'Licet respublica seu regnum hominum ex sola rei natura spectatum, prout fuit inter gentiles et nunc est inter ethnicos, habeat potestatem se defendendi a tyranno rege et illum deponendi in eum finem si necessarium fuerit, nihilominus regna Christiana quoad hoc habent aliquam dependentiam et subordinationem ad Pontificem summum, quia potest Pontifex alicui regno praecipere, ut se inconsulto contra regem suum non insurgat vel illum non deponat, nisi prius causa et ratione ab ipso cognita, propter moralia pericula et animarum dispendia, quae in his tumultibus popularibus moraliter interveniunt, et ad vitandas seditiones et injustas rebelliones.'

[5] Bianchi, t. iii. l. i. c. i. § 6, n. 9, pp. 52, 53.

[6] S. Thom. Sum. 2, 2, q. 12, a. 2, in corp.

[7] Kober, l.c. pp. 117, 118.

[8] Innoc. III. l. xv. Ep. 31, p. 566: 'Sicut ea, quae a Catholicis et devotis principibus rationabiliter ordinantur, firma debent et illibata servari, sic ea, quae a perfidis tyrannis improbe statuuntur, maxime tempore, quo excommunicationis vinculo tenentur astricti, carere debent robore firmitatis, *cum tales legitime nequeant jurisdictionis officium exercere* ab unitate fidelium separati. Cum igitur Otto, jam non nominandus imperator, sed impius persecutor, cum suis fautoribus anathematis vinculo sit innodatus et a debito fidelitatis ipsius absoluti sint universi, nos omnia, quae idem excommunicatus vel aliquis ejus officialis contra clericos vel ecclesias statuit aut statuerit, sive contra principes aut eorum fautores, qui memorato tyranno suum subduxerint obsequium, ut libertatem et justitiam tam Ecclesiae quam Imperii tueantur, denunciamus irrita et inania esse eaque de communi fratrum nostrorum consilio auctoritate apostolica omnino cassamus.' Cf. ib. Ep. 36, p. 569; Ep. 84, 85, p. 603.

[9] Thus St. Bernard designated Roger of Sicily, after the excommunication and decrees of Innocent II., Ep. 127, ad Guitm. p. 138 seq.; Ep. 130, ad Pisan. p. 140 seq. Cf. Ep. 136, 139; Ep. 140, ad Loth. p. 146. Cf. Bianchi, t. ii. l. v. § 12, n. 1, p. 319. But when Roger had made his peace with the Pope, and been recognised by him, St. Bernard wrote to him most respectfully (Ep. 207-209, ad Roger. Reg. Sicil.).

[10] Thence it happened that for brevity many ascribed to the Church the right of deposing. Thus Gerhoch von Reigersberg says, in Psalm. xxix. seq. 630: 'Ordo clericalis, cujus nimirum est officium, non solum plebejos, sed etiam reges increpare atque regibus aliis descendentibus alios ordinare.' Cf. Neander, Kirchengeschichte, ii. p. 390, b. iii. a.

§ 9.

A doubt has been raised, not indeed in the Middle Ages, but of late, as to the power of the Church to release from oaths, whether of allegiance or of any other nature. It will be well to set forth here the universal teaching of canonists and moral theologians. The question now before us is clearly not of the oath taken in a court of justice, but of the extra-judicial oath; not of the oath of assertion (jusjurandum assertorium), but of the oath of promise (jusjurandum promissorium). All are agreed that an oath is not binding if it fail in the requisite justice of its object, for an oath, by which God is called to witness, is a solemn religious act, and cannot bind to evil.[1] It is not lawful to take an oath against religion, good morals, or the rights of a third person, or dangerous to salvation and the public welfare;[2] oaths, for example, to assassinate or put to death unjustly, such as Herod's oath,[3] are forbidden, and are not binding. Every

binding oath must have as its accompaniment *truth*, *judgment* (*i.e.* deliberation), and *justice* (veritatem in mente, judicium in jurante, justitiam in objecto).[4] Although an oath to which especially the last of the three requisites is wanting does not bind, still the Church insists so strongly on the binding nature of an oath in itself, and therefore on the presumption of its power of binding in any individual case, that where the slightest doubt exists as to what is included in the oath she requires application to be made to her for release from the obligation, even though it be only a seeming obligation.[5] Such cases could not be left to the subjective judgment of private persons; and since, from the custom of rendering a contract more binding by the addition of an oath, many cases of the kind came under the judgment of the Church, it was her duty to lay down exact laws for such questions as they arose; but in so doing, she did not call in question the competence of the civil judges to receive complaints in the matter of contracts.[6]

The course adopted by the Church necessarily differed much, according to the oaths brought before her. In many cases the interpretation of the oath sufficed. This was the course of Innocent III. as to the oath of the King of Aragon to maintain his father's base coinage; and also as to the promise of the Archbishop of Naples to observe the ordinary legal procedure everywhere, even when the notoriety of the case made it unnecessary.[7] In other cases, again, he who had made the oath was compelled to carry it out, and he to whom it was made was compelled to make restitution;[8] sometimes for a sufficient cause absolution or relaxation was given, often with the imposition of a penance.[9] Innocent III. commissioned the Archbishop of Mainz to declare null and void the oath of the canons of Würzburg, by which they had sworn to the Bishop of Hildesheim, who held their see, to pay his family after his death two thousand marks, and not to obey his successor until the money had been paid.[10] The same Pope declared the Duke of Austria free from his promise of marriage, by reason of the nonfulfilment of conditions on the other side.[11] Even an oath made under pressure needed relaxation or absolution from the Church.[12] The declaration that an

oath was null was called absolution, precisely as the declaration of innocence of an accused person was also called absolution.[13]

[1] C. 22, Inter cetera, § 1. Porro, c. xxii. q. 4. Cf. the other canons, especially c. 5, 18.

[2] Schmalzgrueber, in l. ii. Decret. tit. 24, § 6, n. 71-74. Reiffenstuel, in h. tit. § 3, n. 73 seq.

[3] Joh. Saresb. Polycr. l. iii. c. xi. p. 499: 'Rex incredulus salubrius incautum et perfidum solvisset juramentum, quam in extinguenda lucerna verbi, auferendo praeambulum gratiae, veritatis occidendo praeconem mensam pollueret convivium incestaret, regiam pessumdaret majestatem, dum incestui cuncta serviunt et obtemperant saltatrici. Ethica quidem regula est, quia non omnia sunt semper promissa solvenda, si forte aut accepturo damnosa aut perniciosa sint promittenti . . . . ipsoque jure cautum est, ut nulla promissio, quae turpem aut tristem habeat exitum, impleatur.'

[4] Hieron. in can. 2, c. xxii. q. 4. Also Godfrey of Vendôme, Tract. de Ord. Episc. (Migne, clvii. p. 282).

[5] Phillips, Lehrb. der Kirchenrechte, § 310, p. 1176.

[6] Phillips, l.c. § 177, n. 3, p. 495 seq.

[7] C. Quanto, 18, de Jurejur. ii. 24 (Innoc. III. l. ii. Ep. 28, p. 558); c. Ad nostram, 21, ibid. (l. i. Ep. 415, p. 392 seq.).

[8] Alex. III. c. 7, Ad nostram, h.t. in relation to a pledge taken to obtain a loan.

[9] C. Cum quidam, § Illi vero; c. Quanto, l.c.

[10] Innoc. l. ii. Ep. 216, p. 775. To such oaths the words of the same Pope apply, c. Sicut nostris, 27, h.t.: 'Non juramenta, sed perjuria potius sunt dicenda, quae contra utilitatem ecclesiasticam attentantur.' What is here meant by 'utilitas ecclesiastica' the context shows; it is a question of injury to episcopal rights by the canons.

[11] Ib. l. vi. Ep. 201, p. 225.

[12] C. 2, Pervenit (Gregor. VII.); c. Si vero, 8 (Alex. III.); c. 15, Verum (Celestin. III.); c. 21, Ad nostram (Innoc. III.).

[13] Pallavicin. Hist. Conc. Trid. l. xi. c. ii. n. 10.

§ 10.

The question, who had power to absolve from an oath, was answered as follows.[1] Passing over the case of an oath of promise to God, which is a vow, and in the matter of dispensation must be dealt with accordingly,[2] we come to the case of a promise to a fellow-man; here we must distinguish whether or not the oath, on the side of him to whom it was made—the recipient—contains anything immoral. If it does, it may be relaxed by the bishop, for such an oath can give no right to him to whom it was made, and can make no contract binding; if it does not,

it can be released, against the will of the recipient, by the Pope alone, and by him only for a weighty cause and for the general good; for in this case there is question of the well-earned right of another, of which he can be deprived only by the highest spiritual power, and on good grounds.[3] Often was application made to the Pope even when the bishop would have had power to act. To the question, whether the civil judge or the sovereign had power to release from an oath made to a man, if not by absolving from it, at least by declaring it null and void,—if not directly, at least indirectly,—the answer given was as follows:[4] (1) It is not beyond the power of the civil judge indirectly to remove the obligation of an oath made by a layman subject to him, if the matter promised by oath belongs to his jurisdiction, and if the public good demands it; (2) the civil magistrates, at least the sovereign, can, if the public good demands it, declare certain kinds of contract so utterly void, that the addition of no oath can make them valid, and (3) even that such oath shall carry with it no obligation, either of justice, or of religious duty; (4) he may for the common good forbid the fulfilment of the obligation promised by oath, in which case the obligation ceases; (5) the emperor may lay a prince or a state of the empire under the imperial ban, and, as a consequence, the subjects are freed from their oath of allegiance. Moreover, a husband, for example, may declare the oath of his wife to be null, and still more, he in whose favour it was made may release her from it.[5] Princes may declare the oaths of their subjects null, since every oath is taken on the supposition that it does not prejudice the authority of the magistrates (salva superiorum auctoritate).[6] The following were accepted as legal grounds for release from promissory oaths:[7] (1) Immorality in the promise; (2) extortion of the oath by force or cunning; (3) a higher or a greater good hindered by its fulfilment; (4) want of judgment and deliberation in taking the oath; (5) doubt as to whether the oath was really taken; (6) removal of scandal to others; and also (7) of danger and occasion of sin. But never might the release from an oath, granted for the benefit of a sinner, serve as an authorisation for further sins in others.[8]

[1] Smalzgrueber, l.c. n. 96, 97.

[2] As to the faculties given to the appointed confessors of princes for the release of oaths made by them, there is only question (1) of vota indeliberata, and (2) of a release which may be given in general by the universal principles of law, for these are always presupposed. On the subject of the authority given by Clement VI. to the French King John, Bishop Fessler has given satisfactory information (Die Wahre und die Falsche Unfehlbarkeit, pp. 64, 65). That which is to be done 'secundum Deum' cannot be carried out contrary to God's commands.

[3] Thus Suarez, l. ii. de Juram. c. xli. n. 2; Sanchez, l. iii.; Moral. c. xxi. n. 2; Laymann, in c. viii. h.t. n. 2; and elsewhere. St. Thom. Sum. 2, 2, q. 89, a. 9, ad 3: 'Et in tali juramento non videtur habere locum dispensatio vel commutatio, nisi aliquid melius occurrat ad communem utilitatem faciendum, quod *maxime* videtur pertinere ad postestatem Papae, qui habet curam universalis Ecclesiae.' From the word 'maxime' Schmalzgrueber concludes, l.c.: 'Ergo aliquando etiam ab Episcopo id fieri potest juxta rei et personarum qualitatem.'

[4] Schmalzgrueber, l.c. n. 100-104.

[5] Germoin, l. ii. Animadvers. c. viii. Marca, de Jurisdict. P. iv. cent. 1, cas. 72, n. 23. Suarez, de Relig. t. ii. tract. 4, l. ii. c. xxix. n. 5. P. Surdus, Consil. 364, n. 25. Bianchi, t. i. l. i. § 17, n. 3, p. 141.

[6] Innoc. III. c. 19, Venientes, h.t.: 'In quo (juramento) debet intelligi jus superioris exceptum.' Cf. Greg. M. in Can. i. d. 85. Suarez, de Relig. l.c. c. xxxviii. Sanchez, de Praecept. Decal. l. iii. c. ii. n. 19. Gonzales, in l. ii. Decret. c. i. Ex administrationis, h.t. n. 8, fin. Bianchi, l. c.

[7] Schmalzgrueber, l.c. n. 105.

[8] Alex. II. 1061 (Mansi, xix. 980; Jaffé, n. 3374, p. 390): 'Possumus in perjurio aliquo crimine lapsis misericordiae manum porrigere, sed non debemus ad futurae perditionis (al.: prohibitionis) exemplum licentiam dare.'

§ 11.

The Eastern Church affords a famous example of release from a promissorial oath. When the Emperor Mauricius (582-602) sent the General Philippikus to his troops they would not accept him; the venerable Patriarch Gregory of Antioch, in spite of illness, addressed to them a powerful speech to recall them to obedience.[1] The rebels, deep as was the impression made by this speech, appealed to their solemn oath, which bound them to be firm in their resolve. To this Gregory replied that he, as bishop, had power to bind and to loose in heaven and on earth; and thus he silenced all scruples.[2] In Spain the fifteenth Council of Toledo (688) had to pass judgment, at the request of the King Egiza, upon three separate oaths made by him.[3] There are also

many such examples among the Popes before Alexander III. Nicholas I. released the Archbishop of Trêves, and others of the clergy, from oaths taken in prison;[4] Leo IX. released Edward the Confessor from his promised journey to Rome, in consideration of a menacing rebellion;[5] Gregory VII. (1080) set free Bishop Henry of Liége from an oath, extorted from him by Count Arnulf, that he would not demand back the property taken from him;[6] he likewise declared to Count Robert of Flanders that his oath to the French King Philip had no binding power:[7] the count had sworn to support the intruder Lambert, who had been guilty of simony. Paschal II. (1099-1115) declared the feudal oath taken reciprocally by the clergy of the church of Chartres to be null, and forbade it in future.[8] Calixtus II. (March 4, 1120) pronounced not binding the oath of allegiance extorted from the nobles of the kingdom by the Spanish Queen Urraca, widow of Count Raymund: the queen desired to reign instead of her son, appointed by King Idelphons to be his heir; the Pope moreover added that the oath previously taken to her son retained its binding power.[9] Hadrian IV. absolved the French Chancellor Hugo from the vow he had made, that he would offer to resign his office upon attaining the dignity of archdeacon, &c.[10]

[1] Evagr. H. E. l. vi. c. vi. 12.
[2] Ibid. c. xiii. (Migne, PP. gr. l. xxxvi. p. 2864).
[3] Hefele, Conc. iii. p. 295 seq.
[4] C. 2, c. xv. q. 6 (Jaffé, Reg. n. 2027, p. 238).
[5] Mansi, xix. 1050. J. n. 3236, p. 374.
[6] Jaffé, n. 3880, 3881, p. 433 seq.
[7] Jaffé, n. 3953, p. 440. Mansi, xx. 370. He remarks: 'Perniciosius esse, illum *per quem* juretur, quam *cui* juretur, et Deum quam hominem offendere.'
[8] Ivo Carn. Opp. ii. 233. J. n. 4748, p. 508.
[9] Jaffé, n. 4995, p. 534.
[10] Mansi, xxi. 804, 806. Jaffé, n. 7093, 7094, p. 675.

§ 12.

When subjects were released from their oath of allegiance to excommunicated princes, it was on the understanding that these princes had themselves been guilty of breaking faith with God;

the oath of obedience to them was always taken on the condition, expressed or understood, that they should fulfil the obligations they had undertaken to the Church and to their people.[1] If they failed in this, the salvation of their subjects was endangered, for they were easily implicated in the crimes of their sovereign, indeed as a rule they were required by him to do things incompatible with their own higher duties. Although an oath taken to a prince who had broken his own faith was allowed to be in itself ipso facto no longer binding,[2] yet for greater security, and that the fact might be fully confirmed, a special declaration on the part of the Pope was not to be looked upon as superfluous, or to be dispensed with, nay more, it was required by the universal rules given above. When the faithful were in immediate danger of falling away from the Faith, through the apostasy of a ruler, the Church had power to forbid obedience to be paid to him, and to release them from their oath of allegiance; she did not directly deprive him of his power, but made use of her own spiritual power in such a way as to remove the danger, and to secure the spiritual welfare of the sovereign and his subjects. Other weapons and direct means were employed against simply immoral kings, and in this case extreme measures were not to be resorted to as long as their subjects were in no danger.[3]

[1] The decree of Innocent III. against Markwald, l. i. Ep. 38, p. 32, says: 'Omnes, qui eidem fidelitate sunt vel sacramento astricti, apostolica auctoritate a sacramento absolvimus, et ne ipsi fidelitatem observent, modis omnibus prohibemus, cum fidelitatem quem aliqui Christiano principi juraverunt Deo ejusque sanctis adversanti et eorum praecepta calcanti nulla mandentur auctoritate servare.'

[2] Augustin. Triumph. Sum. q. 40, a. 4: 'Utrum Papa possit Imperatoris subditos a juramento fidelitatis absolvere. . . . Dicendum, quod, sicut scribitur X de reg. jur. (75 in 6): *frustra sibi fidem quis postulat abalio (eo) servari, qui (cui) fidem praestitam a se servare recusat.* Planum est autem, quod in juramento fidelitatis, quod Imperator Ecclesiae praestat, continetur, quod ipse jurare faciet omnes illos, quibus regnum Italiae seu alia ad Ecclesiam pertinentia committit, ut ipsi Ecclesiae adjutores existant. Si ergo fidelitatem quam jurat, recusat observare, *ipso facto* ejus subditi sunt a juramento fidelitatis ejus absoluti.'

[3] Bianchi, t. i. l. iii. § 1, n. 8-9, pp. 447-449.

§ 13.

The state of things at the present day is in many respects different. The oath, which is inconceivable apart from religion, and which is peculiarly a religious matter,[1] came to be more and more profaned; it was made far too common;[2] little or no importance was attached in private law to the promissory oath, and before long the assertorial oath used as testimony in a court of justice came to be the only one held in esteem.[3] 'The duty of allegiance,' says Walter,[4] 'may be strengthened by an oath, and this in itself has the same value as an oath affirming a fact. The nonfulfilment of an oath lawfully sworn should be punished precisely in the same way as false evidence given on oath, and this falls strictly within the sphere of conscience, and therefore of canon law. The task of exactly weighing all the points of conscience in such cases was so far beyond the civil courts that they were unable to enter into them, and were forced to leave the spiritual courts to decide as to the binding power of promissorial oaths, while they themselves merely carried out the sentence. This is no longer tolerated, and therefore in modern times the promissory oath has no civil effects, and is left completely to the sphere of conscience. One undeniable advantage is thus gained: the oath is now in less danger of being dragged into mere business transactions. But there is a certain inconsistency in the fact that a promissory oath taken in matters concerning private law is ignored by the State, while it is maintained in public law (*i.e.* the oath of allegiance), though the State has no tribunal for matters of conscience to decide the often delicate questions which come before it. As a last resort the power of self-interpretation steps in, and this it is which has brought political oaths so much into disrepute.'

[1] Marx, Der Eid und die Eidespraxis, Regensb. 1855, p. 80 seq. 93 seq.

[2] In early times the Church was forced to complain of the abuse of the oath by civil magistrates. Basil, Ep. 85 (Migne, PP. gr. t. xxxii. p. 465).

[3] Cf. Walter, Kirchenrechte, § 353 seq. 620 seq.

[4] Walter, Naturrecht und Politik, § 106, p. 103 seq.

§ 14.

The assertion that the Popes busied themselves principally in judging and deposing sovereigns, and that no kingdom was secure from their violence, is utterly without foundation. On the contrary, all princes might rule quietly and free from molestation so long as their government was supported by public opinion and a good conscience. Instances of deposition are by no means numerous, and relate in most cases to elective monarchies; but the Papal condemnations fell exclusively upon princes actually guilty of great crimes, and were in accordance with the laws then in force;[1] for this reason their justice was acknowledged and respected by the majority of men in that day, in so far as they were really impartial. Why is complaint made against *the Popes alone*, and *not also against the bishops*, who agreed with them, and against *the Councils*, which adopted their deeds and their words, and acted upon the same principles of public law? This is evident not only in the Roman Councils (1076 and 1080) under Gregory VII., not only in the Council of Rheims (1119), which released from their obedience all the subjects of Henry V.,[2] but comes out most clearly also in the Ecumenical Councils of the Middle Ages.

[1] De Maistre, Du Pape, l. ii. c. ii. v. xi. pp. 218, 235, 353; Gosselin, ii. p. 372 seq. The Protestant Senkenberg (Methodus Jurisprudent. addit. iv. de Libert. Eccl. Germ. § 3): 'Jure affirmare poterit, *ne exemplum quidem esse* in omni rerum memoria, ubi Pontifex processerit adversus eos, qui juribus suis intenti ultra limites vagari in animum non induxerunt suum.'

[2] Labbé, xii. 1306. Mansi, xxi. 235-255. Hefele, v. p. 319.

§ 15.

The eleventh Ecumenical Council (1179) released all those bound by compact to heretical princes from the duty of allegiance, from the oath of fealty, and from all obedience, so long as their rulers persisted in their obstinacy.[1] The twelfth (1215) directed that temporal sovereigns who neglected to cleanse their kingdoms of heresy should be excommunicated by the metro-

politan and the other bishops; in case they made no satisfaction within the space of one year the Pope was to be informed, *in order that he might declare the vassals freed from their allegiance, and give over the land to Catholic rulers.*[2] Whether or not it is assumed that these decrees were issued in concert with Christian princes, and on the understanding of their assistance,[3] it is at least clear that they took the same view of public law as the Popes, and did not consider that the Church was exceeding her powers. The opinion, that these decrees were only passed through the agreement of sovereigns, is grounded upon (1) the presence of princes and civil ambassadors; (2) the introduction to the decree of the eleventh Council, in which are quoted the words of Leo I. on the support given to the discipline of the Church by the laws of Catholic princes;[4] (3) the assent given by clergy and people to these resolutions, as recorded by chroniclers;[5] (4) the character of these Councils, which resemble great parliaments of the whole of Christendom; (5) the conduct of the Popes, who urged princes—*e.g.* Frederick II.—to support similar decrees by civil sanctions (penal law); (6) the fact that the origin of the decrees in question appears to be the ancient imperial laws against the Manicheans and other sects.[6] The learned men who support this opinion acknowledge that it is impossible to limit the expressions as to loss of lands to fiefs of the Church,[7] but they hold that the highest temporal rulers, kings, were exempted from these rules, and that they are to be understood only of the lesser vassals.[8] There have been, however, many objections urged against this last opinion, with appeal to the words of the decrees.[9] It has been urged:—that this was a question of *absolution* from an oath, which was necessarily considered as an act of spiritual jurisdiction,[10] while all a temporal prince could do was to annul an oath in those matters in which it was not taken to God;[11] that the temporal sovereign was indeed entitled to depose a vassal on political grounds, without releasing him from his oath, which then became null, but was not entitled to absolve him from his oath on religious grounds (ex causa religionis), of which the Church was alone the judge; that it cannot be said that the Church obtained her right of absolving from an oath on religious grounds from

the consent of temporal princes, which must be maintained if the contested interpretation be accepted; that it is to draw a false conclusion from the proposition, 'the princes have given their assent,' to say, 'therefore the decree of the Council has its binding power from the princes;' that the dogmatic decrees of the four Lateran Councils would also have to be ascribed to sovereigns, for they were issued in precisely the same way; and lastly, that either the sovereigns of that day must be considered completely ignorant and uncultured, or it must be allowed that they acknowledged in the Church the power of releasing from oaths.[12]

[1] Conc. Lateran. iii. c. 27 (Hard. vi. 1684): 'Relaxatos autem se noverint a debito fidelitatis et hominii et totius obsequii, donec in tanta iniquitate permanserint, quicunque illis aliquo pacto tenentur annexi.'

[2] Conc. Later. iv. c. 3 (Hard. vii. p. 18 seq.): 'Moneantur autem et inducantur, et si necesse fuerit, per censuram ecclesiasticam *compellantur saeculares potestates, quibuscunque fungantur officiis*, ut sicut reputari cupiunt et habere fideles, ita pro defensione fidei praestent publice juramentum, quod de terris suae jurisdictioni subjectis universos haereticos ab Ecclesia denotatos bona fide pro viribus exterminare studebunt, ita quod amodo, *quandocunque quis fuerit in potestatem sive spiritualem sive temporalem assumtus, hoc teneatur capitulum juramento firmare.* Si vero *Dominus temporalis* requisitus et monitus ab Ecclesia terram suam purgare neglexerit ab hac haeretica foeditate, per metropolitanum et ceteros provinciales episcopos excommunicationis vinculo innodetur. Et si satisfacere contemserit intra annum, significetur hoc *summo Pontifici, ut ex tunc ipse vasallos ab ejus fidelitate denunciet absolutos et terram exponat Catholicis occupandam*, qui eam exterminatis haereticis sine ulla contradictione possideant et in fidei puritate conservent.'

[3] Bossuet, Defens. Decl. Cleri. Gall. l. iv. c. i. ii. p. 337 seq. Fleury, Hist. Eccl. t. xv. l. lxxiii. n. 22. Gosselin, ii. pp. 110-114.

[4] Leo M. Ep. 15, ad Turrib. c. i.

[5] On the words of Roger of Hoveden (Annal. Angl. l. ii.): 'His itaque decretis promulgatis et ab universo clero ac populo circumstante receptis,' Bossuet remarks, l.c. p. 339: '*Populi* autem nomine, ecclesiastico more styloque, *laici* omnes intelligibuntur, ipsique adeo principes et eorum legati. Quare si quid in Conciliis adversus haereticos decerneretur, quod ad civilem potestatem pertineret, id, quamquam ad majorem religionis reverentiam Concilii nomine editum, tamen a civili potestate receptum ac ratum habitum ex ea consensione vim suam obtinebat.'

[6] Natal. Alex. H. E. saec. 13 et 14, diss. 3, a. 3, t. xvi. p. 48 seq. Bossuet, l.c. c. ii. iii. pp. 339-342.

[7] Bossuet, l.c. c. iv. p. 342: 'Nos generatim dicta ad omnes (feudos) pertinere non refugimus.

[8] Natal. Alex. l.c. n. 3, p. 49 seq. Bossuet, l.c. c. iii. fin. p. 342.

[9] Important here are the words which follow those quoted above (in note 2): 'Salvo jure *domini principalis, dummodo* super hoc *ipse nullum praestet obstaculum nec aliquod impedimentum opponat, eadem nihilominus lege servata circa eos, qui non habent dominum principalem.*' These last are plainly principes supremi, lords paramount, while the simple liege lord is dominus = qui habet dominium. Bossuet's explanation, l.c., is inadmissible: 'Domini principales dicebantur ii, qui cum inferiores sub se haberent dominos, ipsi supremis absolutisque dominis, h.e. regibus, immediate suberant neque refugere poterant ea, quae supremorum dominorum, regum scil., qui per legatos aderant, consensione decreta essent.' He holds also that kings must have been mentioned 'specialiter,' in case they were included, but ends by saying that it would do them no injury if out of hatred of heresy they agreed to the decree even as applying to themselves. It must not be overlooked that the law makes no other distinction, and includes those who have over them no 'dominus principalis,' and also that the same principle applies to both, and that subjects are equally bound to allegiance, whether their immediate superior be subject to another or not.

[10] According to c. 13, Novit, ii. 1, de Judic.

[11] Bianchi, t. i. l. i. § 17, n. 2, 3, pp. 140-144. He remarks that the l. ult. seq. l. i. ad municp. proves nothing to the point, since the emperors released from oaths not as emperors, but as pontifices maximi. Plautus in Rudent. act v. scene 3: 'Libet jurare, tu meo pontifex perjurio es?' and elsewhere ibid. Cf. Gonzales, c. ii. de Judiciis, ii. 1.

[12] Bianchi, l.c. n. 5, 6, pp. 146-148.

§ 16.

The first General Council of Lyons (1245), with its sentence against the Emperor Frederick II., is brought forward on this point by many theologians,[1] while others, on the contrary, contend[2] that the sentence was approved by the Pope alone, without the consent of the Council, and was passed sacro *praesente* (not approbante) concilio (in presence of the Council). But it must not be taken for granted that the bishops were considered merely as spectators and mutes; in the first two meetings their consent had been most clearly given, and it was against their will that the third meeting was put off twelve days.[3] While the sentence was being passed the Fathers held lighted tapers in their hands, which they then extinguished, in token of their deep abhorrence,[4] exactly as had been done in the case of Henry V. at the Council of Rheims (October 30, 1119).[5] Not one single bishop spoke against the sentence, not one appealed against it. Neither can it be maintained that the bishops took

part in the excommunication only, and not in the deposition. The sentence of excommunication was no longer in question, having been passed upon Frederick in 1239. The accusation now brought against him was of being guilty of complete obstinacy (insordescentia); and excommunication was pronounced against those only who persisted in rendering obedience to the deposed sovereign; the ceremony of the extinguished tapers was expressive of public execration, and of assent to the judgment passed. Had not Thaddeus, who defended Frederick, taken for granted that the Council concurred in the sentence of the Pope, he would not have appealed, as he did, in fact, to a still 'more General Council.'[7] Even Frederick himself, when he proclaimed that no German had taken part in passing sentence against him,[8] made it clear that the bishops of other countries had taken part in it. Martin V. had therefore a right, in 1282, to say that Frederick II. had been deposed by Innocent IV. with the consent of the Council.[9] Nicholas of Curbio had before declared that all the prelates had assented, and had proved their assent by their signatures and seals.[10] The words of the chroniclers,[11] and indeed all the circumstances, make it evident that the presence of the Council is, in this case, equivalent to its approval, more especially as the Pope speaks of previous careful deliberation with the Council.[12] The competence of the court was questioned by none of the envoys; they strove only for a delay of the sentence, and for indulgence for Frederick's children. A tribunal utterly destitute of material power could never have passed sentence on so mighty a sovereign, had not its right been universally acknowledged; or at least in so doing it would have met with loud opposition, especially from the envoys of sovereigns. An eminent jurist such as Innocent IV.[13] would never have been guilty of so great a blunder, nor would the bishops of all lands have assented to it.[14] Frederick himself had not at first disputed the competence of the Church to pass judgment; it was only after the Lyons sentence that he did so.[15] This sentence was in no way out of keeping with the character of the times: the Pope made the declaration that Frederick had rendered himself unworthy of all honours and

dignities, and had thereby forfeited them; and that he (the Pope), in virtue of the binding and loosing power in the Church, released his subjects from their oath of allegiance.[16] The anathema, as well as the release from oath, was an exercise of the spiritual power of the keys; the deprivation and removal from office were a consequence of the spiritual and civil laws then universally recognised, and with a view to these they were pronounced. Fénélon's account of the matter may be here mentioned as quite satisfactory.[17]

[1] Bianchi, t. i. l. i. § 12, n. 1, p. 111.

[2] Natal. Alex. H. E. saec. 13 et 14, dissert. 5, art. 3, n. 8, p. 111 seq. Bossuet, l.c. 7, 8 pp. 349-351.

[3] Hard. vii. 379, 380. Matth. Paris, a. 1245.

[4] Matth. Paris, h.a.: 'Dominus igitur Papa et praelati assistentes Concilio candelis accensis in dictum imperatorem Fridericum, *qui jamjam imperator non est nominandus*, terribiliter, recedentibus et confusis ejus procuratoribus, fulgurarunt.'

[5] Hefele, v. p. 319.

[6] Gosselin, ii. p. 182. It is always supposed that the members of a tribunal agree in the sentence pronounced by the president in their presence, unless they expressly say to the contrary. Cf. also Roncaglia, Animadv. in Natal. Alex. H. E. saec. 11, diss. 2, § 3, v. fin.

[7] Hard. vii. 380.

[8] Huillard-Bréholles, vi. 336.

[9] D'Archery, Spicil. iii. 684, ed. Paris, 1723, sentence against the King of Aragon. Cf. Mamachi, Antiqu. t. iv. p. 247 seq.

[10] Muratori, Rer. Ital. Scr. iii. i. p. 592: 'Sententiam depositionis saepe dicti Friderici protulit summus Pontifex in majori Ecclesia Lugdunensi A.D. 1244. . . . . Quae fuit ab universis ecclesiarum praelatis in eodem Concilio residentibus *approbata*, sicut liquere potest omnibus tam praesentibus quam futuris *per subscriptiones ipsorum et eorumdem sigilla pendentia in eadem*.'

[11] Guillelm. Nang. in gestis Philippi, iii. p. 538. Matth. Paris, a. 1247. Monach. Paduan. l. iii. Chron. p. 591, ed. Urstis.

[12] 'Cum fratribus nostris et S. Concilio deliberatione praehabita diligenti.'

[13] Cf. Schulte, Lehrbuch des Kirchenrechts, § 16, pp. 60, 61, 2d ed.

[14] Bianchi, l.c. l. i. § 18, n. 1-6, pp. 148-157. Gosselin, ii. pp. 180-183.

[15] Greg. IX. Ep. 2, ad Stephan. Cant. Aep. (Labbé, xi. p. 313). Fleury, t. xvi. l. lxxix. n. 37; t. xvii. l. lxxxi. n. 9, 20, 46; l. lxxxii. n. 30, 31. Michaud, Hist des Croisades, t. iv. pp. 512, 514.

[16] Labbé, xi. i. p. 645: 'Nos itaque . . . cum Jesu Christi vices immeriti teneamus in terris nobisque in B. Petri per sona sit dictum: *Quodcunque ligaveris super terram*, &c., memoratum principem, *qui sese im-*

perio et regnis omnique honore ac dignitate reddidit tam indignum, quique propter suas impietates a Deo, ne regnet vel imperet, est abjectus, *suis ligatum peccatis* et abjectum omnique honore et dignitate privatum a Domino ostendimus, denunciamus, ac nihilominus sententiando privamus, omnes, qui ei juramento fidelitatis tenentur adstricti, a juramento hujusmodi perpetuo absolventes.'

[11] Fénélon, de Auctor. Summi Pontificis, c. xxxix. p. 387: 'Idem est prorsus ac si diceret: Declaramus eum ob facinora et impietatem indignum esse, qui gentibus Catholicis praesit; declaramus contractum ab imperatore palam violatum jam populos imperii non adstringere; quandoquidem populi nonnisi pactis conditionibus subesse et parere volunt. In hoc Innocentius exercet potestatem a Christo datam: Quodcunque ligaveris super terram, &c., videl. ut Fridericum ligatum peccatis et populos juramento fidelitatis solutos declaret.'

§ 17.

No less clearly speak the Councils of the fifteenth century, especially those of Constance and Basle. (*a*) The first issued a decree (July 14, 1415) against all who should in any way molest the German King Sigismund on his journey to the Antipope Benedict; for the Dauphin of France, the Duke of Austria, and the Count of Savoy were suspected of being in conspiracy against him.[1] The decree menaced all possessors of spiritual, temporal, and even kingly dignities, with loss of the same in case of disobedience.[2] (*b*) This same Council had decreed (May 20, 1415) that neither of the claimants of the Papal chair could be again elected Pope, and warned all the faithful, of all ranks, even kings and emperors, against rendering them obedience, under pain of being chastised as promoters of schism.[3] (*c*) In like manner all holders of spiritual and temporal dignities are included in the decree of July 4th, by which it is prohibited to leave or to disturb the Council; even kings and emperors are menaced with perpetual infamy and forfeiture of office; and this was to take place at once, without further sentence, and to bring with it incapacity for all spiritual or temporal dignities and honours.[4] (*d*) Even in the command to keep perfect silence and peace, read and approved in the meeting of July 6th, excommunication and two months' imprisonment were laid down for all those, whatsoever their dignity, whether kingly or imperial, who should disobey it, together with the penalty inflicted on

the promoters of heresy.[5] (*e*) In the Monitorium, issued November 21, 1415, against Frederick Duke of the Austrian Tyrol, for plundering and injuring the bishopric of Trent, he is strictly enjoined, 'in virtue of holy obedience, and under pain of anathema, of sacrilege, and of the *forfeiture of all the feudal possessions* which he holds from the Church *or the Empire*,' to give back that which he had robbed, and to acknowledge the sovereignty of the prince-bishop within his territory.[6] (*f*) On March 3, 1417, the above-named duke, together with his accomplices, was declared a rebel, and a robber of the Church, was laid under anathema, and punished with the loss of his dominions, and incapacity for holding others.[7] (*g*) On July 26, 1417, sentence of deposition was passed on Peter de Luna (Benedict XIII.);[8] and all the faithful, without distinction of rank or position, were forbidden to consider and honour him as Pope, under the penalty of promoters of heresy and schism, the loss of all spiritual and worldly offices and dignities, together with other canonical penalties.[9] (*h*) The decree on the Papal election, October 9, 1417, pronounced against those who should offer violence to the electors, injure their freedom, or cause it to be injured, the penalties of infamy and loss of office decreed by Boniface VIII. against those who should assault cardinals.[10] (*i*) In the order issued for the protection of the ecclesiastical liberties and possessions of the president of the Council (according to the resolutions of September 23, 1415), by which the laws of the Emperors Frederick II. (1220) and Charles IV. (1377) on this subject were confirmed, all emperors, kings, and other dignitaries were admonished, under heavy penalties, not to burden the churches, even under pretext of the consent of the bishops, without obtaining leave of the Pope.[11] (*k*) In like manner the Bull 'Inter cunctas,' issued by Martin V., with the consent of the Council, February 22, 1418, inflicted on the adherents of the heresy of Wicliffe and Huss, without distinction of rank, the usual penalties, and amongst the rest the loss of *all* offices and dignities.[12] (*l*) The Council, convoked first (1423) by Martin V. in Pavia, in accordance with the decree of Constance, and [afterwards moved to Siena, confirmed the

decrees against the adherents of Peter de Luna with precisely the same formulas.[13] (*m*) The Council of Basle used the same terms (July 18, 1432) in the passport delivered to the Papal envoys,[14] and spoke no less strongly (*n*) when it accepted the protection of Sigismund and the Duke of Bavaria.[15]

[1] Hefele, Conc. vii. p. 231, n. 2.

[2] Hard. Conc. viii. 441, Sess. xvii.: 'Quicunque *cujuscunque status* aut conditionis existat, *etiam regalis*, cardinalatus, patriarchalis, archiepiscopalis, episcopalis, ducatus .... seu alterius cujuscunque dignitatis et status ecclesiastici vel saecularis existat, qui serenissimum et Christianissimum principem D. Sigismundum Romanorum et Hungariae regem vel alios cum eodem ad conveniendum cum D. rege Aragonum pro pace Ecclesiae .... ad dictam conventionem euntes vel redeuntes impediverit, perturbaverit vel molestaverit .... sententiam excommunicationis auctoritate hujus sacri Concilii generalis ipso facto incurrat, absolutione ejusdem ipsi sacro Consilio seu futuro unico et indubitato summo Pontifici, praeterquam in mortis articulo, specialiter reservata, et *alterius omni honore et dignitate, officio, beneficio ecclesiastico vel saeculari*, sit ipso facto privatus.'

[3] Sess. xii. Hard. l.c. p. 375: 'Nullus cujuscunque dignitatis vel praeeminentiae, *etiamsi imperiali, regali*, cardinalatus vel pontificali dignitate praefulgeat, eis vel eorum alteri contra hoc decretum ullo unquam tempore obediat seu adhaereat, sub poena fautoriae dicti schismatis et maledictionis aeternae, ad quas contra praesumptores, si qui in posterum fuerint, *etiam cum invocatione auxilii brachii saecularis*, et alias rigide procedatur.'

[4] Sess. xiv. Hard. l.c. pp. 400, 401: 'Synodus *statuit, ordinat et diffinit*, quod quaecunque persona Concilii, cujuscunque status, gradus, ordinis aut praeeminentiae existat, ab hoc S. Concilio deinceps sine licentia Concilii vel ad hoc deputandorum recesserit, et quaecunque Concilii aut quaevis alia persona ipsum Concilium quomodolibet perturbaverit .... *perpetuo sit infamis omnique dignitate, honore, statu, officio et beneficio, ecclesiasticis et saecularibus, etiamsi imperialis, regalis, cardinalatus aut pontificalis existat, ipso jure privata*, spe promotionis omnino sublata, nec aliquatenus ei aperiatur janua dignitatis aut honoris *ecclesiastici aut mundani*.'

[5] Sess. xv: 'SS. Synodus Const. .... praecipit et mandat sub poena excommunicationis latae sententiae, quam contravenientes vult incurrere ipso facto et sub poena carceris duorum mensium et fautoriae haeresis, ne aliquis, cujuscunque status, auctoritatis, gradus, ordinis, praeeminentiae aut conditionis fuerit, *etiamsi imperiali, regali*, cardinalatus, archiepiscopali aut episcopali *praefulgeat dignitate*, in hac praesenti sessione ipsam sessionem seu pronunciantes et loquentes in eadem perturbet, murmuret, impediat, et quemvis strepitum voce aut pedibus faciat.'

[6] Sess. xx. Hard. l.c. pp. 465-471.

[7] Sess. xxviii. Hard. l.c. p. 697 seq.

[8] Sess. xxxvii. Hard. p. 835 seq.

[9] The words are: 'Atque privationis omnium beneficiorum, dignitatum

et bonorum ecclesiasticorum *et mundanorum*, etiamsi episcopalis et patriarchalis, cardinalatus, *regalis* sint *dignitatis aut imperialis;* quibus si contra hanc inhibitionem fecerint, sint *auctoritate hujus decreti et sententiae ipso facto privati*, et alias juris incurrant poenas, ne eidem Petro de Luna tanquam Papae obediant.'

[10] Sess. xxxix. Hard. p. 855 seq.: 'Quod si quis hujusmodi metum vel impressionem aut violentiam elec oribus ipsis aut alicui ipsorum in electione Papae intulerit seu fecerit aut fieri procuraverit, aut factum ratum habuerit, aut in hoc consilium dederit vel favorem . . . *cujuscunque status, gradus, aut praeeminentiae fuerit, etiamsi imperiali, regali, pontificali vel alia quavis ecclesiastica aut saeculari praefulgeat dignitate*, illas poenas ipso facto incurrat, quae in constitutione fel. rec. Bonifacii, P. viii. quae incipit Felicis (c. v. de Poenis, v. 9 in 6) continentur, illisque effectualiter puniatur.'

[11] Sess. xix. Hard. l.c. pp. 463, 923 seq. Cf. Hefele, vii. p. 237 seq. The words are: 'S. Synodus hoc perpetuo statuit et ordinat, quod *nulla persona saecularis cujuscunque dignitatis, status et conditionis existat, etiamsi imperiali, regali, vel quaecunque praefulgeat dignitate*, sub praetextu consensionis episcopi clero tallias, impositiones vel subsidia imponat, exigat vel recipiat, nisi prius Romano Pontifice consulto, sub poenis, bannis, et censuris eisdem.' This is spoken quite in the style of the hated Boniface VIII.

[12] Hard. l.c. p. 905 seq. Hefele, p. 345 seq. Here it is said: 'Volumus insuper . . . . ut contra omnes et singulos utriusque sexus hujusmodi errores tenentes, approbantes ac fautores et receptatores eorum, *cujuscunque dignitatis, status vel conditionis existant*, auctoritate nostra inquirere studeant (episcopi et inquisitores) et eos, quos hujusmodi . . . . erroris labe respersos repererint, etiam per excommunicationis poenam . . . . nec non *privationis dignitatum* . . . . corrigant et puniant.'

[13] Inhibitionem factam omnibus et singulis Christifidelibus sub poenis fautoriae haeresis et schismatis ac *privationis omnium beneficiorum, dignitatum et bonorum ecclesiasticorum et mundanorum*, et alias poenas infligendo, ut dicta sententia praefati Concilii (Const.) . . . . latius continetur, ratam et gratam habens, ejus executionem continuari volens, decernit, statuit et declarat, omnes et singulos post obitum dicti Petri de Luna continuantes seu perseverantes in credulitate vel obedientia erroris et schismatis ejusdem Petri . . . . seu in vice ejus succedentes, eorumque receptatores, defensores et fautores, *cujuscunque status*, praeeminentiae vel conditionis *existant etiamsi* pontificali, cardinalatus, *imperiali vel regali aut alia quaecunque ecclesiastica vel saeculari praefulgeant dignitate* . . . . fore obnoxios et ligatos poenis et censuris in dicta sententia contentis.

[14] Exhortatur omnes et singulos Christifideles *cujuscunque dignitatis*, status, gradus aut praeeminentiae *existant, spiritualis et temporalis, etiamsi regali, ducali*, archiepiscopali, episcopali, *vel alia quavis praefulgeant dignitate* . . . . eisque virtute obedientiae mandat, ut si per eorum dominia, terras, territoria, civititates, oppida . . . . aut alia loca vos et quemlibet vestrum transire contingat, sub poenis, sententiis et censuris tam in Constantiensi et Senensi quam hujus S. Synodi decretis contentis et fulminatis, districte injungendo quatenus vos et quemlibet vestrum . . . . secu-

ros, liberos et tutos cum rebus et bonis vestris universis ire, stare et redire sine molestia et impedimento permittant.

[18] Sub poena excommunicationis et *privationis dignitatis cujuslibet ecclesiasticae vel mundanae* interdicit, &c.

§ 18.

It is clear that these so-called reforming Councils, to which appeal has so often been made by liberal theologians of former days, have acted, as did the Popes, or even more strongly, upon the supposition of the subjection of things temporal to things spiritual—of the right of the Church in certain cases to dispose of worldly property, to pronounce the forfeiture of temporal and spiritual offices, and to inflict punishment even on the mightiest of princes. These principles they put in execution in their decrees against all who attempted to oppose them, were they emperors or kings, and this for comparatively small offences. Those who consider the Papal decrees of a like nature as intolerable assumptions, iniquitous usurpations of power, and even as dogmatic errors, are bound to give a detailed explanation of the definitions of these Councils, more especially since they were passed by their own favourite Councils. It is true that Gallican theologians in particular have attempted to place these decrees in a milder light, and to modify and weaken their meaning by various explanations; but either these explanations hold good likewise of the Papal Bulls, upon which so many of the decrees in form or in matter are based, (for example, see (*h*) suprà), and in which, in fact, less strong expressions have been chosen, or else the authority of the decrees of these Councils, like those of the Popes, must be rejected; and this would be to give up completely principles which have been hitherto retained, at least outwardly. Those who support the 23d condemned Proposition of the Syllabus of 1864 know well enough that Councils as well as Popes are therein included. Nothing then remains but to reject the authority of Councils together with that of Popes.

§ 19.

Various remarks have been made by Gallican theologians[1] on the subject of these decrees, both in general and in detail. I. In

general the Gallicans say: (1) They are to be understood divisim et in sensu accomodo, so that the spiritual penalties apply to kings, but not the temporal.[2] (2) The Fathers inflicted temporal punishments in virtue of the assent of temporal princes, represented by their ambassadors, and of the civil laws already in existence.[3] (3) The Council of Constance gave its safety into the charge of Sigismund, the King of the Romans;[4] had it been part of the business of the Council to defend itself, it would not have made the demand of the king; Sigismund acceded to the request, thus making clear the distinction existing between the two powers.[5] (4) Further, the Council openly acknowleged that after the degrading of Huss the Church could do no more, and thus proclaimed that the State alone had power to inflict temporal punishment.[6] (5) Had the Council of Constance intended to imply the doctrine that the Church has any supremacy or power, direct or indirect, over the State, it would have been in favour of the doctrine on tyrannicide, which it itself condemned.[7] (6) That the Council had no such intention is proved by the fact that its most eminent members, Peter d'Ailly and Gerson, opposed such teaching.[8] (7) The Council by no means desired by its utterances to lay down a law or establish a rule. In a question so closely affecting the majesty of temporal rulers it could decide nothing without deliberating on the matter, hearing the princes themselves, and proceeding strictly according to the votes of the Fathers. Since the subject of the authority of the Church in relation to the State was neither deliberated nor voted upon in the discussions by 'nations' or in the solemn assemblies, it is certain that the Council did not intend to determine and define anything to the prejudice of sovereigns.[9] If the words of the fourth and fifth sessions, on the superiority of the Council, are not to be considered as a binding decree, neither can any such definition be recognised in the expressions now under consideration.[10]

[1] Besides Natal. Alex. H. E. saec. 15 et 16, dissert. 5, t. xviii. p. 293. seq. ed. Bing. 1790, and Bossuet, Def. Decl. Cleri. Gall. P. i. l. iv. c. x. p. 355 seq. ed. Mog. 1788, see especially Remonstrantia Hibernorum contra Lovanienses ultramontanasque censuras de incommutabili regum imperio subditorumque fidelitate auctore R. P. F. R. Caron, theologo emerito.

(reprinted from the London edition of 1665 in the Traitez des Droits et Libertez de l'Eglise Gallicane, Paris, 1731, t. ii. P. ii.). In the dedication to Charles II. of England it is said of this Remonstrantia: 'Quod sub umbra alarum tuarum velut sub ara Jovis reposita non minus eo ipso quam Delos Apollini consecrata sacrosancta redderetur et immunis.' Cf. also De la Hogue, de Ecclesia, p. 275 seq.; Tournely, de Ecclesia, t. ii. p. 459 seq.

[2] Natal. Alex. l.c. n. 4, p. 297.

[3] Bossuet, l.c. p. 355: 'Dicimus . . . si quid ibi a Patribus de poenis temporabilus decernatur, id fieri *consensu principum*, qui ex toto orbe Christiano per legatos aderant, eoque jure, quo Ecclesia ad temporales poenas inferendas principum constitutionibus adjuvatur.' So also Caron, l.c. P. v. c. x. n. 32, p. 191, in relation to passage (*a*) in § 19 above, to which also is added as a second answer: 'Concilium, dum decretum illud emanasset, oecumenicum non fuisse;' and also that the Council of Basle (Sess. xii.) once omitted the deprivation a beneficio saeculari, which are certainly weak arguments.

[4] Sess. xiv.: 'S. Synodus exhortatur invictissimum principem D. Sigismundum Romanorum et Hungariae regem, quatenus placeat, patentes literas sub suae majestatis sigillis dare et omnibus principibus, vasallis et subditis s. Imperii, et praesertim civibus et incolis civitatis Constantiensis, praecipere et mandare, quod manutenebunt et defendent praedictum Concilium . . . . quamdiu duraverit, et quicunque (decretum istud) non observaverit cujuscunque dignitatis . . . . existat, ... eo ipso sententiam imperialis banni incurrat, perpetuo sit infamis, nec ei unquam portae dignitatis pateant, nec ad aliquod officium publicum admittatur, quin imo omnibus feudis ac aliis bonis, quae a Romano tenet Imperio, sit ipso jure privatus.'

[5] Bossuet, l.c.: 'Quae ad ecclesiasticam dignitatem et utilitatem maxime pertinentia, si per sese S. Synodus decernere potuisset, non erat, cur a rege requireret. Qua de re rex decernit his verbis: *qui statuit terminos gentium secundum numerum angelorum, et utrorumque ministeria miro ordine dispensans, sicut choros angelicos variis dignitatibus . . . . mirabiliter insignivit, sic et Ecclesiam adhuc militantem in terris diversis tam spiritualium quam temporalium distinxit titulis potestatum ut pulchra fidelibus, et infidelibus terribilis apparens, ut castrorum acies ordinata procedat.* (Here, as in the language of Boniface VIII., spiritual and temporal rulers are included in the Church militant=Christendom.) Qua temporalium et spiritualium distinctione ex jure divino explicata, temporales poenas ipse decernit, utilitati ecclesiasticae servituras. At si has Ecclesia per se inferre potuisset, distinctionem vanam neque ex jure divino imperator explicasset, neque S. Synodus recepisset.'

[6] Natal. Alex. p. 297: 'Secundo S. Synodus in sententia contra J. Hus ipsum attento, *quod Ecclesia Dei non habeat ultro quod gerere valeat* [words of Celestine III. c. Cum ab homine, ii. 1, de Jud.], *judicio saeculari relinquere et curiae saeculari relinquendum fore decernit.* Habuisset autem Synodus post degredationem, quid ulterius gereret, si Ecclesia jus haberet gladii temporalis per totum orbem Christianum ratione peccati, et maxime haereseos; poenas enim temporales in J. Hus decernere po-

tuisset, non curiae saeculari decernendas reliquisset.' Cf. Caron, l.c. P. ii. c. vi. p. 64.

[7] Natal. Alex. l.c. pp. 298, 299, Sexto.

[8] Ibid. pp. 299-301, Nono.

[9] Ibid. p. 297, n. 4, Init.

[10] Bossuet, l.c. p. 358, who appeals to the Doctrina Lovanens. pp. 73, 74, on Can. de loc. Theol. v. 6. Bellarm. de Conc. ii. 19. The challenge: 'Ostendant has formulas confuse congestas *formam habere decreti*, ostendant, in his *propositum aliquid omnibus ad credendum*, ostendant saltem in iis aliquid distincte dictum, quod ad rem nostram pertineat,' is still more disregarded by the later opponents of the Papal decrees.

§ 20.

II. Next come the remarks made by the Gallicans in detail on the decrees in question, which are as follows: (1) Referring to the passage (*a*) above, the loss of spiritual and temporal offices is to be understood of those which belonged to the Church, either originally, or by rights gained in later times:[1] and the same interpretation holds good of many other passages. (2) As to passage (*d*), they object that it is an absurdity to sentence the King of the Romans to two months' imprisonment, and that the expressions as to the kingly and imperial dignity can relate only to the highest officials of the empire.[2] (3) In the case of the Duke of Austria (*e*), the Council pronounced the loss of Church fiefs by its own authority, but the loss of the fiefs of the empire by the authority of the imperial law, and also by that of Sigismund, whom the duke had disobeyed.[3] (4) As a consequence, the execution of the sentence (*f*) was also given over to the King of the Romans.[4] (5) In the passage (*h*) the quotation is not from the Bull 'Unam sanctam,' but from the Constitution 'Felicis,' which treats of Church feudatories alone,[5] and respects the rights of temporal princes.[6] (6) The decree of the president of the Council (*i*) is founded upon the fourth Lateran Council (which, however, in can. 46[7] was not speaking of sovereigns) quite as much as on the laws of Frederick II. and Charles IV., which apply only to vassals, dukes, counts, and barons;[8] when kingdoms are mentioned they are only such as were like Naples, Corsica, and Sardinia, fiefs of the Roman Church.[9] (7) In the Bull of Martin V. the very words them-

selves prove that the question was not of fiefs in general (*k*), but of Church fiefs ;[10] and the same is proved by other passages in the Acts of the Council of Constance.[11] In like manner, earlier Councils[12] have reference to the fiefs held from the Church, and bestowed by her. The fiefs of the German Empire may be in some sort considered as Church fiefs, since the empire itself was looked upon as a fief of the Pope.[13] In short, that which, in expression, is joined together by the Council, must, in interpretation, be separated according to its different members.[14] (8) The words of the Council of Basle (*n*) are also to be understood to mean that those over whom the Church had gained such a right were punished with the loss of temporal dignities and offices.[15]

[1] Bossuet, l.c. p. 357.

[2] Natal. Alex. l.c. p. 297: 'Porro quod poenam carceris in imperatorem et reges ob silentii violationem Synodus decreverit, quam reipsa infligere non potuisset, quis sibi persuadeat? Praeterea nullus in ea sessione praeter Sigismundum . . . . rex aderat; his igitur verbis: *etiamsi imperiali, regali . . . . praefulgeant dignitate* sacrae personae imperatoris vel regum non intelliguntur, sed qui primariis imperii vel regnorum dignitatibus conspicui sunt, ad quos hisce poenis coercendos S. Concilium imperatorem ac reges hortatur.'

[3] Natal. Alex. l.c. pp. 297, 298, Tertio. Bossuet, pp. 355, 356.

[4] Natal. Alex. p. 298: 'Cui Sigismundo S. Synodus latae in eumdem Frid. sententiae executionem ut Ecclesiae defensori et advocato commisit.' Sess. xxviii.

[5] Ib. Quarto: 'Porro si Conc. Const. reges aliosque supremos principes decreto illo poenali complecti voluisset, quoad poenam ex auctorationis et privationis jurium temporalium, laudasset potius Const. Bonifacii, quae incipit: *Unam sanctam*, quam Constitutionem *Felicis*, quum ista in dominos dumtaxat temporales Ecclesiae feudatarios, qui S.R.E. cardinales fuerint hostiliter insecuti vel percusserint aut ceperint ac eorum conscios temporales poenas decernat.'

[6] Boniface here says: 'Per hoc quoque saecularibus potestatibus non adimimus facultatem utendi legibus contra tales, quas adversus sacrilegos catholici principes ediderunt.'

[7] C. 7, de Immunit. Eccles. iii. 49.

[8] Natal. Alex. l.c. p. 299, Octavo.

[9] Bossuet, l.c. p. 357.

[10] The words: 'privationis . . . . feudorum, quae a quibuscunque Ecclesiis, monasteriis ac aliis locis ecclesiasticis obtinent.' Cf. Natal. Alex. p. 299, Septimo; Bossuet, p. 356.

[11] *E.g.* Sess. xli.: 'feudisque et rebus aliis, si quae aut quas in Romana vel aliis Ecclesiis obtinebit, sit privatus.' Cf. Natal. Alex. l.c. p. 298, Quinto.

[12] Conc. Lugd. ii. sub Greg. X. c. 2 (c. 3, de Elect. i. 6 in 6). Conc. Vienn. in Const. Ad providam (Hard. vii. p. 1340 seq.). Natal. Alex. p. 301, Decimo.

[13] Bossuet, p. 357. Cf. c. ix. p. 351 seq.

[14] Bossuet, p. 356: 'Quae conglobata licet, quis non videat jure tamen diversissimo decerni, nec ab eodem fonte manare, confuseque dicta tamen congrue apteque singulorum ratione habita intelligi exercerique debere?'

[15] Bossuet, p. 357: 'Facile intelliguntur privari dignitate etiam mundana ii, in quos sibi tale jus Ecclesia comparavit.'

§ 21.

Manifold objections can be and frequently have been raised to these interpretations. I. As to the general remarks; it is (1) inconceivable that the Council of Constance in all the passages quoted intended that only the spiritual punishments mentioned, and not the temporal, should apply to kings; the wording of the decree would in this case be far worse than unskilful:[1] it is drawn up in general terms, which are opposed to any such limitation; where the law makes no distinction, we have no right to make any such. The punishments, temporal and spiritual, were inflicted in precisely the same way on all those named, without distinction of rank and position. On other occasions Papal decrees contained the merely general clause, 'Whatsoever be their rank' (cujuscunque conditionis, &c.),[2] whereas it is in this case made far stronger by the addition of the words, 'although he be of imperial, kingly, or any other dignity' (etiamsi imperiali, regali, &c.). (2) There is no sign that the consent of temporal princes or of their envoys—and by no means all Catholic sovereigns were represented there—was asked or given. The Council makes use of the simple straightforward words, 'The holy Council decrees, commands, and defines,'[3] and it inflicts punishments 'by the authority of this holy Council, and in consideration of this decree and judgment.'[4] The Council of Constance claims for itself this right, just as the Popes had done before it, and rather in greater than in less degree. If the Popes are to be blamed for presumption and error, the accusation falls with equal force on the Councils. No single syllable of the decree points to concession or consent on the part of sovereigns to the appointed punishments of loss of

all honours and offices, be they spiritual or temporal; these are called mundanae, saeculares dignitates, and are specified according to the rank of the holder, the kingly and imperial dignity being expressly included. Moreover, how could the consent of sovereigns make this proceeding lawful? Either all Christian sovereigns had *collectively* the power to declare a king or prince deprived of his kingdom, in which case he was not, under all circumstances, an independent prince, or they had not this power; in which case they could not impart it to the Council, either in person or through their envoys, since no one can give that which he does not himself possess. Thus the consent of sovereigns would in no way have entitled the Council to act as it did. Again, it is hard to conceive why sovereigns should ever have given their consent, unless they and most or many of their contemporaries supposed the Church to have received certain powers in this matter, justified at least by the custom of centuries, by prescriptive title, and by previous consent.[5] The fact that in individual cases the Council relied upon civil law is no proof that this was always the case, or that it did not consider itself authorised to overstep the limits of civil law and issue its own independent commands. It even confirmed imperial laws. (See above, passage (*i*) in § 17.) (3) It was but natural that the Council should desire to secure its safety by a decree of King Sigismund, since he alone was in a position effectually to insure it and to repel all evildoers; and without his aid the Council, in spite of its activity in passing laws, had no power to put them into execution. A direct power in matters temporal and the wielding of the material sword had never been ascribed to the Church, even by the Popes. The distinction between the two powers was recognised by the Fathers of Constance as well as by the Popes and by Sigismund; nevertheless they shared the belief, universal in the Middle Ages, that in extraordinary cases and in urgent need the spiritual power may extend to matters temporal.[6] (4) In the case of the degradation of Huss, the Council was forced to acknowledge, according to the words of Pope Celestine III. and to the law of the decretals, that the Church

could go no further; since the spiritual judge was unable, by ecclesiastical law, to pronounce sentence of death, and to take part in any such sentence constituted an irregularity.[7] (5) The teaching concerning tyrannicide must never be confounded with the theological doctrine of the Middle Ages on the power of the Church over the State, for the two questions are entirely distinct; the declaration that a certain person has forfeited his rights, goods, and dignities is far from being a declaration that he has also forfeited his life, and least of all is it a decree that a subject has a right to take it from him.[8] The theological doctrine as to forfeiture of goods, &c. was so firmly rooted at the time of the Council of Constance, that the use made of it by the Council can cause no astonishment.[9] Indeed (6) the very authors here cited, Gerson and d'Ailly, by no means utterly reject it.[10] (7) It is universally admitted that these expressions of the Councils of the fifteenth century contain no definition of dogma.[11] In passing, and in a wider sense, certain theologians have declared that doctrine to be defined which seemed to them undoubtedly true (sententia certa); but, as has been already shown, there is here no dogmatic definition, either by Pope or by Council. The expressions cited have no less weight than those of the same nature used by the Popes. Certain Gallicans are so inconsistent as to lay stress on the decrees of Constance and Basle treating of the Papal powers (especially those of the fourth and fifth sessions, the ecumenical character of which is on the best grounds contested), while they utterly reject the decrees treating of princes, issued in some cases by sessions the ecumenical character of which has been universally admitted.[12]

[1] Mamachi, Orig. et Antiqu. t. iv. p. 246, nota: 'Verba, quae synodus usurpat, tam late patent, ut coarctari in sensum arctiorem nequeant.'

[2] *E.g.* c. 3, de Elect. i. 6 in 6.

[3] 'S. Synodus statuit, ordinat et diffinit.' Roncaglia, note 1 in Alex. Natal. l.c. p. 302.

[4] 'Auctoritate hujus S. Concili, auctoritate hujus decreti et sententiae.' Vide suprà, § 17, (*a*) and (*h*), and note 2 and 9.

[5] Bianchi, t. i. l. i. § 19, n. 1, 2, pp. 158-160.

[6] Roncaglia, l.c. p. 303.

[7] Roncaglia, p. 302.

[8] Roncaglia, l.c. pp. 302, 303. Bianchi, l.c. § 8, n. 2 seq. p. 79 seq.

[9] Roncaglia, p. 302: 'Satis mihi est observare, id temporis adeo invaluisse doctrinam asserentem Ecclesiae potestatem poenas temporales in principes decernendi, ut hoc negare apud quosdam haeresis haberetur. Ita expresse affirmavit Aeneas Sylvius in oratione habita ad Australes, quam legere est apud Muratorium Anecd. t. ii.'

[10] Roncaglia, p. 303. Cf. Schwab, Gerson, p. 735. Peter d'Ailly, in the passages quoted by Natal. Alex. (saec. 15 et 16, diss. 5, n. 3, t. xviii. p. 300), denies only the potestas directa et temporalis.

[11] Mamachi, p. 247, nota: 'Neque id nos declaratum a Synodo ut fidei dogma nunc dicimus, sed sumtum ac positum ut rem certam.' Bianchi, l.c. § 19, n. 6, p 166: 'Noi però non pretendiamo, che la nostra sentenza sia stata come domma di religione nei sacri Concilii dichiarata e definita, ci basta che da Sinodi generali sia stata supposta come certa e riputata del poter della Chiesa, ed anche non solo senz' alcuna contraddizione de' principi, ma con pieno consentimento di tutti i signori e monarchi del mondo Cattolico eseguita e pratticata.'

[12] Bianchi, l.c. n. 7, p. 167.

§ 22.

In answer to the objections in detail, it may be allowed that single decrees did treat of the loss only of fiefs held from the Church; but it by no means follows from this that all other decrees, especially those in which all sovereigns without exception were included, are to be limited to the domains held as fiefs of the Church.[1] Had the question been one of Church fiefs merely, the Fathers would have had no need of the consent of temporal princes before deposing rebellious vassals; the feudal law then in force would have borne them out, for the Roman Church had over her vassals precisely the same rights as other feudal lords, and could punish 'felony' in the same way.[2] What need then of the consent of temporal princes?[3] Moreover, there is no ground for the assertion that the Holy Roman Empire was considered altogether as a fief of the Roman Church; the German kingdom, distinct according to strict law from the empire, was certainly not so considered; but beyond this the empire itself, although in many ways dependent upon the Apostolic See, was not held in fief. Sigismund, at Constance, would never have agreed to any such assertion.[4] It cannot therefore be proved that the deprivation of worldly dignities, proclaimed without distinction for certain crimes, as at Constance, was limited to the vassals of the Church and of the Holy Roman

Empire. The words of most of the decrees allow of no exception; and if, according to Bossuet,[5] the words of the third and fourth Lateran Councils apply to all feudatories, those of the Councils of Constance and Basle are still less capable of limitation.[6] Moreover, facts are decidedly against it. When, after the conclusion of the Council of Constance, Count John of Armagnac persisted in his adherence to the Antipope Benedict, Martin V. summoned him to receive sentence of loss of sovereignty, according to the decree of the Council.[7] The Fathers knew well enough that they were unable to subject King Sigismund to two months' imprisonment for causing disturbance in the Council, and that in his case spiritual penalties alone could be inflicted; but it does not therefore follow that when they mentioned the possessors of imperial and kingly dignity (*d*) they intended merely the officials representing them, any more than that they intended merely the servants of cardinals, archbishops, and bishops, when they mentioned those holding the rank of cardinal, archbishop, and bishop. The sentence would without doubt have been ridiculous, had it not set forth the power of the Church to inflict temporal punishments upon all Christians, whatsoever their station; but setting forth such a power the decree might with perfect reason be issued, even though the two months' imprisonment were not intended personally for the king of the Romans and future emperor.[8] The constitution of Boniface VIII. had not specially and expressly named those holding the dignity of king or emperor; the Council of Constance, according even to Bossuet,[9] included these also. The reason why the Constitution 'Felicis' was the one especially quoted is, evidently, that it treats of the same subject-matter. The Bull 'Unam sanctam' treated of the subject in general, whereas the 'Felicis' was precisely suited to the particular question, and was therefore adopted as a precedent. In this case the Council of Constance evidently went further than the obnoxious Boniface VIII.; even though the extended formula 'of whatsoever rank,' &c. be set down to the legal style adopted by the Council, still some principle must surely be involved in the widened form of words. Finally, the limited sense given to the words

of the Council of Basle is in accordance neither with the expressions themselves nor, least of all, with the general proceedings of this assembly, which, before it broke up, was without a head and utterly schismatical. For it went further than any Pope or Council in treating of civil and especially feudal questions, so much so that Sigismund complained loudly of this, and of its interference with his rights of sovereignty;[10] it even sought to be judge in the quarrel between Duke Eric of Sachsen-Lauenburg and Frederick II. of Saxony, on the electoral dignity.[11] Ostensibly it adhered closely in all things to the proceedings of Constance, but from time to time it went beyond them. Even were the statement of Gosselin admitted,[12] in which he says: 'The Councils of Constance and Basle might take for granted the consent of Christian princes to the decrees in question, especially since they confine themselves entirely (?) to confirming and renewing punishments enjoined by the universal legislature of Catholic Europe for heresy and excommunication,'—still this view neither explains the facts nor is it consistent with them. On the contrary, these Councils took for granted the *sum-total of the rights* claimed and exercised in that day by the Church upon *any title whatsoever*, whether spiritual or temporal; and thus they placed themselves on an equal footing with the analogous Papal Briefs, which have no more given a decisive doctrinal utterance than have these Councils. They met with opposition neither greater nor less than did the analogous decrees of the Roman Pontiffs, and they found support in the same principles which held sway throughout the Middle Ages. A 'supremacy of the Pope over princes and people in political things'[13] was certainly not asserted by the Bishops of Rome in the first ten centuries; but neither was it asserted by those of later centuries either in any universal sense, apart from special titles, or in relation to such things as were *purely temporal*. Only in so far as things temporal entrenched upon the province of the Church and in extremest need, when the salvation of souls and the stability of the Church were in danger, did they take upon themselves a further power, in the firm conviction that it lay within their authority to employ means requisite to the desired

end,[14] and supported in this conviction by the principles universally held in that day. As a rule, they made use of their spiritual power alone; but a moral superiority over temporal princes was given them by the whole growth of Christian States, and their position as the fathers and leaders of Christendom prepared for them an extensive field of action. When things spiritual and things temporal were so closely united such could not fail to be the case.

[1] Roncaglia, p. 302.

[2] Bianchi, l.c. n. 3, pp. 161, 162.

[3] Mamachi, p. 246, nota: 'Agi deinde de officiis et beneficiis Bossuetius censet, quae Ecclesiae vel *innato* vel *acquisito* jure essent. Hoc autem si verum est, quid opus esset *consensione principum* ad privandos refractarios officio ac beneficio, quod Ecclesiae vel *innato* vel *acquisito* jure competeret? Quid ergo? Vir gravissimus vi argumenti pressus modo hoc, modo illud opponit, ut tueri se posset.'

[4] Bianchi, l.c. n. 4, pp. 162, 163.

[5] Bossuet, l.c. c. iv. p. 342.

[6] Bianchi, l.c. n. 4, 5, pp. 163-165.

[7] 'Secundum tenorem decreti et sententiae generalis Concilii Const., qua reus declarandus fuerat ac privandus comitatu Armeniacensi et Ruthensi ac omnium aliarum terrarum et dominiorum suorum.' Mansi, note 2 in Nat. Alex. l.c. p. 303, who adds: 'Hic non agitur de feudis imperialibus vel ecclesiasticis, quae elusio est P. Alexandri, sermo est de sententia Concilii executioni mandanda. Quid hic repouet P. Alexander?' Measures contra dominos temporales ac populos qui illos [the Popes deposed at Pisa] fovere ac sustinere voluerint, had already been taken into consideration. Döllinger, Beiträge, ii. p. 302.

[8] Roncaglia, l.c. p. 302.

[9] Bossuet, l.c. p. 357: 'Bonifacii VIII. Const. Felicis .... adversus eos *extenditur* qui imperiali, regali .... praefulgeant dignitate.'

[10] Bossuet, l.c. p. 358. Martene et Durand. viii. 722. Monumenta Concil. General. saec. 15, Vindob, 1857, pp. 520-522.

[11] Döllinger, Lehrbuch der Kirchengeschichte, ii. p. 330.

[12] P. ii. p. 275

[13] Huber, p. 6.

[14] According to the sentence: 'Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potuit' (l. ii. Cui Dig. ii. 1, de Jurisd.).

ESSAY VII.

CIVIL RULERS AND THE HOLY SEE.

Civil rulers in the Middle Ages regarded their relation to the Church as it was regarded by Popes and theologians, and shared their opinions except when passion or self-interest interfered. They considered that to support the action of the Church by their civil authority, to punish those who disobeyed her, and to act always as her defenders and protectors, were amongst their gravest duties.[1] The most powerful princes have expressed in many documents their desire to secure, through pious zeal for the Church, peace and prosperity to their governments and everlasting blessedness to themselves.[2] I. The jurisdiction of the Church was especially exercised by Popes over princes in their matrimonial affairs. II. This ecclesiastical jurisdiction was expressly recognised by princes.

Part I. Ecclesiastical Jurisdiction exercised by the Popes over Civil Princes in their Matrimonial Affairs.

§ 1. King Robert of France. § 2, 3. Simony of Philip I. § 4-7. His marriages. § 8-11. Philip Augustus. § 12. The King of Leon.

§ 1.

That kings were, as Christians, subject in their private lives like all other believers to the supremacy of the Church was never doubted, and Popes often punished and censured their misdeeds. Pope Nicholas I. maintained the sanctity of marriage in regard to Lothair II., who had divorced his wife Theutberge, and lived in adultery with Waldrade.[3] Another striking instance is that of King Robert of France, who, with the consent of several bishops of his kingdom, had incestuously married his

kinswoman Bertha. For this satisfaction was required of him from Gregory V., A.D. 997; and the following year he was sentenced to do penance for seven years.[4] In the year 1000 the zealous Abbot of Fleury (who died in 1004) succeeded in inducing the king to submission; he renounced his connection with Bertha, and lived till his death in 1031 an exemplary life.[5] Even if the stories of St. Peter Damiani[6] are mere hearsay, we have plenty of proof of the impression made in France by ecclesiastical censures. There was no cause for deposing the king,[7] and Robert's final decision set him quite straight with the Church.[8] Later, in 1069, a new scandal threatened the Church when Henry IV. of Germany wished to separate from his wife; but St. Peter Damiani dissuaded him from his idea.[9]

[1] Childebert in Capitul. (Labbé, Conc. vi. p. 487, ed Venet.): 'Et quia necesse est, ut plebs, quae sacerdotis praecepta non ita ut oportet custodit nostro etiam corrigatur imperio,' &c. Facundus of Hermiane (pro Defens. trium Capitulorum, l. xii. c. iii.) praised the Emperor Marcian because he 'suo contentus officio ecclesiasticorum *canonum executor* esse voluit.'

[2] Cf. the diploma granted in 1150 by Conrad II. to the monastery of Corvei (Migne, PP. Lat. clxxxix. p. 1497).

[3] Baron. a. 866, n. 37-42. Lothair wrote: 'Cernuo lumine vestram affatim deposcimus paternitatem, ut dum nos vobis missisque vestris .... per omnia super omnes coaequales nostros obedire volumus, non aliquem nostri Deo miserante consimilem super nos extollere aut terrae praeponere vestrae libeat paternitati.' Nicholas had only warned him that if he did not amend a severe sentence would fall upon him: 'Coram tota et cum tota Ecclesia luce clarius peremtorio Dei judicio, tota producta spicula, patieris et procul dubio cunctis videntibus praecipitaberis' (Floss, Leonis P. Privilegium, Doc. iv. p. 32).

[4] Mansi, xix. 233, 223. Pertz, v. 694. Hefele, iv. 619, 622. Hofler, Deutsche Päpste, i. 125, 170.

[5] Mabillon, Ann. O.S.B. l. i. c. lxxiv. Helgaldi, Epit. Vitae Roberti Reg. ap. Bouquet, x. 107. Hofler, l.c. p. 184.

[6] Petr. Dam. Opusc. 34, c. vi.; Opp. iii. 260.

[7] Bossuet clearly shows that there was none, Defens. P. i. l. ii. c. xxvii. p. 237.

[8] Leo IX. wrote subsequently to King Henry (Jaffé, n. 3270, p. 377): 'Pater tuus Robertus laude et consultu episcoporum regni tui Bertam, matrem Odonis comitis, duxit uxorem; ob quam rem, quoniam sibi erat carnis affinitate conjuncta, ab antecessore nostro cum episcopis, qui placito interfuerant, excommunicati, post ad Sedem Apostolicam venientes cum satisfactione, sumpta poenitentia, redierunt ad propria.'

[9] Hefele, iv. p. 817 seq.

§ 2.

Half a century after Robert, the French King Philip I. was a cause of great sorrow to the Holy See, on account of his oppression of the Church, his practice of simony, and his immoral conduct.[1] In a Brief of the year 1073, addressed to the Bishop of Châlons-sur-Saone,[2] Gregory VII. complains of him, saying at the same time that as he hears through the chamberlain Alberich that Philip has promised amendment, he has delayed to proceed against him with canonical severity; Philip shall now, however, renounce the practice of simony, and without demanding any payment allow the Archdeacon of Autun, elected lawfully and with the royal consent, to be consecrated for the long-vacant see of Macon. If this were not done the Pope would no longer suffer the corrupt state of things, but would punish his stubborn obstinacy with the authority of the Prince of the Apostles. 'For either the king will abandon the shameful trade of simony, or the French people, if they do not wish to renounce the Christian faith and be laid under an interdict, will refuse any longer to obey him.'[3] This censure was used as a last resort for the amendment of the king; its terms, as well as those of the following Briefs, show plainly that the temporal effects of ecclesiastical censure had a recognised authority in France.

The king did not dare to disobey, and he made known to the Pope his fidelity and willingness to comply.[4] Gregory answered him on the 13th April 1074 in a truly sublime Brief.[5] Philip should first make good the injuries done to the Church at Beauvais, and reconcile himself to God, considering well that his predecessors enjoyed much fame as long as they defended the Church, thus receiving for their virtue honour and power, and losing them with the loss of their virtue. But Philip's obedience proved to be one of words merely, not of deeds; whereupon the Pope sent an encyclical letter to all the French bishops, lamenting the ruin of France, the multitude of crimes and the impiety that prevailed, and laying all to the charge of the bad king.[6] He said Philip had disgraced the kingly dignity by sacrilege, adultery, and perjury, and by plundering foreign merchants like a common high-

wayman; that it was the duty of the bishops solemnly to warn him, to resist him in his unrighteousness, and to hold a synod for concerting measures against him; if the king remained deaf to their voice, they were by virtue of the apostolic authority to lay him under a ban, and France under an interdict; if he still remained obdurate, it should be the care of the Pope with the help of God to free France of him.[7] Gregory called upon Count William of Poitiers and the other nobles to expostulate with the king, threatening that if everything proved unsuccessful he would excommunicate not only the king, but all who still acknowledged him their ruler.[8] The Pope wrote also in the same sense to Archbishop Manasses of Rheims.[9]

[1] Ivo Carnot. Ep. 35, 66. Guibert. de Nogento, de Vita sua, l. iii. c. ii. Fleury, Hist. Eccl. t. xiii. l. lxxxii. n. 6, 16, 20.

[2] Greg. VII. l. i. Ep. 35, p. 317, ed. Migne. Jaffé, Reg. n. 3571. Cf. also l. i. Ep. 36, p. 318, to Archbishop Humbert of Lyons.

[3] Nam aut rex ipse, repudiata turpi simoniacae haeresis mercimonia, idoneas ad sacrum regimen personas promoveri permittet, aut Franci pro certo, nisi fidem Christianam abjicere maluerint, generalis anathematis mucrone percussi, illi ulterius obtemperare recusabunt.

[4] 'Significasti . . . . te B. Petro devote ac decenter velle obedire et nostra in his, quae ad ecclesiasticam religionem pertinent, monita desideranter audire atque perficere' (Greg. l. i. Ep. 75, p. 348. Jaffé, n. 3617).

[5] Hefele, Conc. v. p. 27 seq.

[6] 'Quarum rerum rex vester, qui non rex, sed tyrannus dicendus est, suadente diabolo caput et causa est, qui omnem aetatem suam flagitiis polluit et suscepta regni gubernacula miser et infelix inutiliter gerens subjectum sibi populum non solum nimis soluto ad scelera imperio relaxavit, sed ad omnia, quae dici et agi nefas est, operum et studiorum suorum exemplis incitavit' (l. ii. Ep. 5, p. 362 seq. J. n. 3637).

[7] Nulli . . . . dubium esse volumus, quin modis omnibus regnum Franciae de ejus occupatione tentemus eripere.

[8] 'Si in perversitate perduraverit, nos Deo auxiliante et nequitia sua promerente in Rom. Synodo a corpore et communione S. Ecclesiae ipsum et quicunque sibi regalem honorem vel obedientiam exhibuerit, sine dubio sequestrabimus' (l. ii. Ep. 18, p. 376. J. n. 3650).

[9] L. ii. Ep. 32, p. 387. J. n. 3666, d.d. 8 Dec. 1074.

§ 3.

Whilst many of the French bishops manifested a weak and lukewarm spirit, some even openly took part with the king. Seeing the Pope deprived of the assistance of the bishops, Philip

endeavoured to stay his hand by making many fair promises, and by repairing, at least in part, the injury he had done to the Church. The Roman Synod of Lent, 1075, had threatened him with excommunication, unless he gave assurance of his repentance and amendment to the legate sent expressly to France.[1] But since first of all with the bishops the principles of the Church had to be asserted, the legate Hugo of Die, at the Synods he held in 1076 and 1077, occupied himself principally with punishing bishops guilty of simony and other crimes.[2] King Philip was on the one hand writing the fairest promises to the Pope, whilst at the same time he was seeking to prevent the bishops from appearing at the Synods, because he said that was injurious to the lustre of his crown. It became more and more evident that interference was necessary against criminal prelates, for instance, the Archbishops of Tours and Rheims, and that it was necessary also to publish the laws of the Church against simony and lay-investiture. This was done at the Synod of Poitiers in 1078.[3] When in 1080 Gregory VII. definitively removed Archbishop Manasses of Rheims from his see, he entreated the king[4] not to afford him protection, and not to hinder the choice of a successor. He declared to him that he would pardon the sins of his youth if he would from henceforth show himself the friend of justice and mercy, and lead a new life,—which did at last seem more likely. Philip had not only not recognised the Antipope Henry IV., but had placed himself in more friendly relations with the Church, and not resisted the measures taken against those bishops who had allowed themselves to forget their duty.[5] He knew the right time in which to ward off the blow that threatened him.

[1] Hefele, v. p. 36 seq.
[2] Ib. p. 101 seq.
[3] Ib. pp. 104 seq. 142 seq.
[4] L. viii. Ep. 20, p. 593. J. n. 3917.
[5] Hefele, l.c. p. 192.

§ 4.

But this same King Philip was the cause later of great trouble in another matter. In the year 1092 he divorced his wife Bertha,

to whom he had been married since 1071, and who was the mother of his heir Prince Louis, and he married Bertrada of Montfort, who had left her first husband, Count Fulk of Anjou. The canonist Ivo, who since 1090 had been raised to the bishopric of Chartres, in place of the deposed Gaufried, earnestly remonstrated against this step, both with the king and with Archbishop Rainald of Rheims. He was not deceived by the pretence of the alleged approval of the Pope, and in spite of the king's invitation held aloof from the marriage ceremony, which was performed in Paris by the Bishop of Senlis. For this he was imprisoned by King Philip.[1] In a Brief of 1092, Pope Urban II. censures the Archbishop of Rheims and his suffragan for their compliance with the desires of the sensual king, charged them to speak to him conscientiously, and to threaten him with the spiritual sword, and required, above all, the release of the faithful Bishop of Chartres.[2] The last was effected, and in November 1093, Ivo came with the Pope to Rome, and remained with him till January 1094.[3] Through Philip's management a great Synod was held at Rheims, which ratified his marriage, for in the mean time Bertha had died. It was also to pass judgment upon Ivo, being held under the presidency of his metropolitan, Archbishop Richer of Sens, Rainald of Rheims being supposed to be prevented by illness. This, however, was not really the case, and Rainald appeared; but the ambitious Richer had been won over to the king's side by promises, and had ratified his marriage with Bertrada. Ivo refused to allow himself to be judged out of his own province, and he appealed to the Pope.[4]

The legate, Archbishop Hugo of Lyons,[5] at a Synod held in October 1094, at Autun, excommunicated Philip because he had taken a second wife during the lifetime of the first. The king not being able to go himself, sent an ambassador to the Synod at Piacenza, bearing his excuses and begging for a reprieve, which was granted him till Whitsuntide (from the beginning of March to the 13th May 1095).[6] In November 1095, at the Synod of Clemont, in Philip's own dominions, Urban pronounced against him and Bertrada sentence of excommunication,[7] even, according to some accounts, against all who recognised him as king, or who

held unlawful intercourse with him.[8] This is very probable when all the circumstances are considered: Ivo of Chartres had as early as 1092 represented to the king that by his adulterous connection with Bertrada he was risking his crown and his kingdom; he had kept back for some time the Pope's encyclical letter, believing that a rising would take place aginst the king. He had already warned the Pope of the craftiness of Philip's ambassador.[9] Urban, on his side, had seen that an energetic condemnation of the king was now a necessity; and indeed Philip required very strong measures to bring him to submission.[10]

[1] Pag. a. 1094, n. 5. Bianchi, t. ii. l. v. § 9, n. 2, p. 274 seq.

[2] Mansi, xx. 686. Jaffé, n. 4088, p. 456.

[3] Jaffé, pp. 458, 459, from Ivo, Ep. 27, Opp. ii. 13. Ivo (Ep. 28, ad Philipp. Reg.) says the Pope had forbidden the bishops from crowning the king's unlawful wife Bertrada.

[4] Hefele, p. 192.

[5] Cf. the letter of May 16, 1094 (Jaffé, n. 4134, p. 460).

[6] Berthold. Constant. a. 1094, 1095. Hefele, pp. 193, 194.

[7] Bernoldi, Chron. h.a. p. 464. Chron. Andegav. a. 1095, ap. Labbé, Nov. Bibl. mss. l. Paris, 1657, i. 281. Hefele, p. 197.

[8] Guillelm. Malmesbur. de Gest. Angl. l. iv. c. ii.: 'In eo Concilio excommunicavit D. Papa regem Philippum Francorum et omnes, qui eum vel regem vel dominum suum vocaverint et ei obedierint et ei locuti fuerint, nisi quod pertineret ad eum corrigendum.' Also the Chronicle of the chorister Guido of Châlons and Alberich of Trois Fontaines apud Gosselin, ii. p. 142.

[9] Ivo, Ep. 15, ad Philipp. Reg.; Ep. 23 (al. 24), ad Widonem Dapifer; Ep. 46, ad Urban P.

[10] Gosselin, pp. 144, 145.

§ 5.

But even before the Pope left the French dominions the king sought to make his peace with the Church. He vowed with his hand in the hand of the Pope, at Nîmes, 1096, to leave Bertrada, and received the promise of being absolved as soon as he had given proof of the sincerity of his intention.[1] Some bishops who were completely on Philip's side declared that they would not give up communion with Philip, and would even free him from the ban, although he should continue to live with Bertrada. The Pope in answer to this

wrote to Richer of Sens and the other French bishops, saying it was not within their power to absolve those excommunicated by the Holy See.[2] In the following year Philip despatched an envoy to Rome, who was to declare on oath that since the meeting at Nîmes, Philip had held no unlawful intercourse with Bertrada. The Pope, whose suspicions were only too well founded, required that some of the bishops and nobles of the realm should come to Rome and take the same oath.[3] He removed the interdict which had been pronounced by the Archbishop of Lyons, and allowed Philip again to wear the crown.[4] Whether the French bishops actually came to Rome and took the oath is not known, but it is certain that in 1098 Philip was again living with Bertrada, and had broken the promises he had made in his submissive letters.[5]

[1] Chron. Malleacens. Bernoldi, Chron. a. 1096, Ep. Urbani II. ap. Jaffé, n. 4323, p. 475 seq. Hefele, pp. 218, 222 seq.

[2] Mansi, xx. 665. J. n. 4218, p. 467 seq.

[3] Urban. Ep. dat. Lat. viii. Kal. Maii 1097, al. 1098. J. n. 4323, cit.

[4] Ib.: 'Ab interdictionis, quae pro hac causa in eum prolata fuerat, vinculo absolvimus et utendi pro more sui regni corona auctoritatem praebuimus.'

[5] Labbé, xii. 758.

§ 6.

Cardinals John and Benedict, legates of the new Pope, Paschal II., went immediately after the Synod of Valence (30th Sept. 1100) in person to the king to induce him to leave Bertrada. As their mission was ineffectual, they declared at the Synod of Poitiers in November of the same year that Philip and Bertrada would be again excommunicated. The spiritual and lay followers of the king raised a tumult at this; but the legates and the majority of the bishops were firm.[1] Ivo of Chartres, who had before shown himself so severe, used his influence to induce the Pope to show the utmost moderation possible towards the weak king, and to preserve the kingdom from the danger which the anathema would bring upon it.[2] Philip felt his position to be critical, and associated his son Louis in the government, as he feared a revolt among his powerful vassals,[3] which the prevailing conviction of his guilt would easily render formidable. He therefore

anew entered into negotiations with Pope Paschal, and obtained the promise of absolution under certain conditions. For this purpose Cardinal Richard of Albano was sent to France by the Pope in the spring of 1104. He convened a Synod at Troyes, and later, by the advice of Ivo, another at Beaugency on the Loire, before which Philip and Bertrada appeared in the course of the summer. Both pledged themselves upon the gospels to separate from one another, and never even to speak together, except in the presence of honourable witnesses, until the Pope should dispense them. As Cardinal Richard was not to act without the advice of the French bishops, and as they expressed no opinion, nothing further was done; whereupon Philip laid a complaint before the Pope of alleged ill-treatment, whilst Ivo, still inclined to clemency, thought that the absolution might have been granted.[4] Paschal II. gave authority to Bishop Lambert of Arras, in case Cardinal Richard had left France, to absolve Philip and Bertrada in presence of the other bishops, if they would perform satisfaction and keep their oath, and he apprised of it the bishops of the dioceses of Rheims, Tours, and Sens.[5] Philip and Bertrada fulfilled the required conditions before the end of the year at the Synod of Paris, and were received again into the Church.[6] They subsequently gave no cause for complaint. Philip died in 1108, after having, together with his son Louis, promised to the Pope to protect the Church against Henry V.[7] Bertrada, converted by Robert of Arbrissel, ended her days as a penitent in the convent of Fontevraud.

[1] Labbé, xii. 1081. Mansi, xx. 1117 seq. Hefele, p. 234 seq.

[2] Ivo, Ep. 144 (al. 89): 'Nostrae suggestionis summa est, ut imbecillitati hominis amodo, quantum cum salute ejus potestis, condescendatis et terram, quae ejus anathemate periclitatur, ab hoc periculo eruatis.'

[3] Daniel, Hist. de France, t. iii. pp. 398, 613. Velly, Hist. de France, t. ii. p. 425. Gosselin, p. 146.

[4] Hefele, p. 245 seq.

[5] Mansi, xx. 1015. J. n. 4462, p. 487.

[6] Pag. a. 1014, n. 4-6.

[7] Suger, Vita Ludov. Grossi, p. 289. Jaffé, p. 494.

§ 7.

In this long struggle we see how slow the Popes were in their proceedings against Philip. They appear throughout to be pressed on by the opinion of the best of their contemporaries and by their official duty. On repentance they are always ready to remove the ban, and the idea of a formal deposition does not seem to occur to them. Philip was not in open opposition to the Church; he did not defy her; he even submitted himself several times after he had relapsed into his sin. His crime was not directly against religion, nor against the welfare of the Christian community, although it gave very bad example and much scandal; but as he never positively refused to give satisfaction to the Church, further proceedings were not called for, neither could much result have been hoped from them.[1] As we have seen, the excommunication was not immediately followed by the forfeiture of political and civil rights; a length of time and certain conditions must have intervened. It was easy for those upon whom the ban was laid, by negotiations and promises of obedience, to obtain a respite; and as long as an amendment could be hoped for, the smoking flax was not to be quenched.[2] If the fact related by Odoricus Vitalis, who said that whilst Philip was excommunicated he never wore his diadem and held no royal feasts, is not to be taken quite literally,[3] it at least tallies with that related by Ivo, that at some Church festivals the bishops about the court placed, as usual, the crown upon the king's head,[4] to inspire him with courage and confidence, whilst more zealous prelates, when he was in their dioceses, omitted to do so, in accordance with the prohibition of the Archbishop of Lyons, when Papal legate, to keep up communion with him.[5]

[1] Bianchi, t. ii. l. v. § 9, n. 1, p. 274 seq.; n. 6, p. 283 seq.

[2] Gottfried of Vendôme, Opusc. iv. (Migne, t. clvii. 220), says: 'Tunc quis a Satana circumvenitur, quando sub specie justitiae illum per nimiam tristitiam perire contingit, qui potuit liberari per indulgentiam. Praeterea bonus et discretus Augustinus in Ep. ad Parmen. dicit, vix aut numquam excommunicandum eum esse, qui in malo opere obstinatam multitudinem habet secum; nam tolerabilius videtur uni parcere, ne in Ecclesia schisma seminetur multorum.' Cf. ib. pp. 289, 290.

[3] Odor. Vital. H. E. l. viii. a. 1092: 'Tempore Urbani et Paschalis RR. PP. fere quindecim annis interdictus fuit. Quo tempore numquam diadema portavit nec purpuram induit, neque solemnitatem aliquam regio more celebravit.'

[4] Ivo, Ep. 66, ad Lugd.; Ep. 67, ad Urban II. upon the Archbishop of Tours.

[5] Natal. Alex. H. E. saec. 11 et 12, c. x. a. 2, t. xiii. p. 434. In England, under Archbishop Dunstan, King Edgar was not allowed to wear his crown for seven years for having dishonoured a nun. Cf. Möhler, Ges. Schr. i. p. 80.

§ 8.

Still more important were the affairs concerning the marriage of the French King Philip Augustus, who after the death of his first wife Isabella married, on the 14th August 1193, Ingeburge, sister of the Danish King Canute II.; but after a short time, having taken a dislike to her, demanded a divorce. A Synod held at Compiègne declared the marriage null, because Ingeburge was related in the fourth or fifth degree to the deceased Queen Isabella, and was therefore a connection of the king's. The beautiful and virtuous Ingeburge, who was treated like a prisoner, appealed to the Holy See, where her brother Canute also lodged a complaint.[1] Pope Celestine, on the 13th May 1195, declared that the hasty divorce granted by the Synod of Compiègne was null,[2] and despatched envoys to France, who at the beginning of the year 1195 held a Synod at Paris, which however produced no result. In defiance of the Pope's warning against contracting a fresh alliance Philip Augustus, in June 1196, married Agnes of Meron.[3] The new Pope, Innocent III., made every effort of kindness to induce the misguided king to mend his ways; he made him the most moving representations, and required that the Bishop of Paris should do the same (1198). He assured him of his fatherly love and his affection for France,[4] placed before him the evil he had committed in divorcing Ingeburge, and reminded him that in case of the death of his son Louis, born of his first wife Isabella, he would be in danger of having no heir, since the offspring of his connection with Agnes would be illegitimate.[5] In September 1198 the Pope despatched Cardinal Petrus to repeat the former warnings, and in case of obstinacy

to threaten the interdict.[6] In a fresh letter he, in a paternal and tender manner, renewed his representations.[7] He approved the pains the legate had taken to establish a cessation of arms between France and England,[8] and commissioned the French bishops and abbots[9] to prevail upon the king to put away Agnes and take back his wife; he told them how hardly it went with him to take measures against the king, but he was determined at all costs to execute his stern duty, more especially as Philip's bad example was inducing other rulers, for instance, the Duke of Bohemia, likewise to violate the sanctity of marriage. In conclusion he desired them to obey the sentence that would be pronounced by his legate.

[1] Mansi, xxii. 667, 671. Gesta Innoc. III. n. 48 seq. p. 93 seq. Migne, t. ccxiv. Hurter, Innoc. III. vol. i. p. 168 seq. Hefele, v. p. 668 seq.

[2] Jaffé, Reg. n. 10,531-10,533, p. 901.

[3] Gesta Innoc. l.c. n. 50, p. 96. Innoc. l. i. Ep. 171 (Migne, l.c. p. 149). Hefele, l.c.

[4] Innoc. III. l. i. Ep. 171, p. 148: 'Licet dextera Domini suam fecerit in nostra promotione virtutem, de terra suscitans inopem et de stercore erigens pauperem, et illud nos voluerit dignitatis solium obtinere, ut *non solum cum principibus, sed de principibus etiam* judicemus, cum tamen conditionem humilitatis nostrae conspicimus et de quo ad quid simus vocati, pensamus, praeter generale debitum pastoralis officii, quod singulis nos constituit debitores, tibi et regno tuo specialiter nos fatemur teneri, in quo nos recolimus in studiis literarum aetatem transegisse minorem ac divino munere quantaecunque scientiae donum adeptos beneficiorum impensam multiplicem suscepisse. Ad cumulum autem hujus praecipuae dilectionis accedit progenitorum tuorum grata memoria' &c.

[5] Innoc. l. i. Ep. 4, ad Paris. Ep. pp. 3-5.

[6] Vide letter to the legate, l. i. Ep. 347, pp. 320, 321: 'Ita quod praeter baptisma parvulorum et poenitentias morientium nullum divinum officium celebretur.' Cf. Ep. 345, 346, p. 319 seq.

[7] L. i. Ep. 348, 355, pp. 321, 329.

[8] L. ii. Ep. 23, p. 552; Ep. 24, ad Phil. Reg. p. 533.

[9] L. ii. Ep. 197, p. 745 seq.

§ 9.

In the mean time Cardinal Petrus had left no stone unturned to induce the king to renounce his connection with Agnes of Meron, but in vain. He therefore convened in 1199 the great Synod of Dijon, in which the subject of the interdict now to be proclaimed was discussed for seven days. The king sent a de-

puty with an appeal to the Pope himself, hoping thereby to postpone the interdict; but this did not mislead the legate, who having convened a fresh Synod at Vienne on the 14th January 1200, in the Pope's name proclaimed the interdict, of which a communication was made to all the French bishops.[1] Many of these begged permission to postpone the execution of the sentence, but the Pope refused their request; and all then rendered obedience, with the exception of Bishop Hugo of Auxerre. The king was furious against the faithful hierarchy, ill-treated and banished many of the prelates, and testified extreme exasperation. He said he envied Saladin, who had no Pope to deal with. But the calm firmness of the Pope, the courage displayed by the bishops, even by the once time-serving William of Rheims, uncle of the king, and the fear of further measures on the part of the Pope, obliged him to enter into negotiations, and give assurance of his submission.[2] Innocent despatched as cardinal legate Octavius of Ostia, a relation of the king, with powers to remove the interdict if Philip Augustus would make good the injuries he had done to many of the prelates, would put away Agnes of Meron, and reinstate Ingeburge as his lawful wife; if in every way things were restored to what they had been, the Pope would, if the king demanded it, cause the validity of his first marriage to be investigated. He informed the divorced queen of what he had done for her, and bade her continue her prayers;[3] he called upon her brother in Denmark to send competent witnesses and advocates, that the divorce pronounced by the French bishops might be annulled on the ground of non-observance of justice.[4] The Cardinal of Ostia was received honourably in France.[5] The bishops consulted with him, the king went out to meet him, and declared himself willing to make atonement.[6] He indemnified the priests whom he had injured, promised to see Agnes no more until the question of the divorce from Ingeburge had been decided, and in the mean time to treat the latter as queen. On this the interdict was removed, the 7th September 1200. But the king persisted in desiring a divorce from Ingeburge on the ground of kinship, and demanded a fresh trial; this the legate appointed to be held at a Synod at Soissons, to take place after

a delay of six months, six weeks, and six days.[7] Innocent rejoiced at the course of events, but desired that his instructions should be executed with even more exactness. Ingeburge had been solemnly acknowledged queen, but had shortly afterwards been once more treated as a prisoner, and was not prayed for by name in the king's chapel. Innocent required that she should be restored to complete freedom,[8] and reminded the king, who complained of too great severity on the part of the legate,[9] that he was bound to render him obedience, that the legate had put upon him no undue constraint, but had only fulfilled the requirements of justice, and had made use of the fitting remedy.[10] Another matter in which the Pope's instructions had not been accurately followed was that Agnes had not been removed from France, but only from the king's immediate neighbourhood; her approaching confinement was given in justification of this.[11] The Pope removed the interdict from the disobedient Bishop of Auxerre, but rejected his appointment to the archbishopric of Sens.[12]

[1] Mansi, xxii. 707 seq. Gesta Innoc. n. 51, 52, p. 97 seq. Hefele, p. 705.
[2] Hefele, p. 706.
[3] Innoc. l. iii. Ep. 11, pp. 881-883.
[4] Ib. Ep. 12, pp. 883-884.
[5] Bishop Odo of Paris and Bishop Nivelo of Soissons extol him in their letters to the Pope. Innoc. l. iii. Ep. 13, 14, pp. 884-887.
[6] Report of the legate to the Pope, l. iii. Ep. 15, p. 887 seq.
[7] Mansi, l.c. p. 721. Hefele, pp. 706, 707.
[8] L. iii. Ep. 16, pp. 891-895.
[9] Ib. Ep. 17, pp. 895, 896.
[10] Ib. Ep. 18, pp. 896-898.
[11] Hefele, p. 707.
[12] L. iii. Ep. 20, pp. 898-899.

§ 10.

At the Synod of Soissons, opened on the 2d March 1201, were present the king, followed by many lawyers, and Ingeburge, supported by the delegates of her brother. The Danish envoys mistrusted the legate and appealed to the Pope himself; and in spite of all entreaties to await the arrival of Cardinal John of Paul, commissioned especially by the Pope for the

Synod, they set forth at once upon their journey. Three days later the cardinal arrived, and for the space of two weeks the marriage of Philip Augustus and Ingeburge was treated of. The king anticipated the judgment of the cardinal, saying that he recognised Ingeburge as his wife, and would part from her no more. He took her from the convent where she was staying, and with her hastened from Soissons. The Synod was thereupon dissolved, as the crafty king desired. Ingeburge was again kept as a prisoner and not treated like the king's wife, although in the same year Agnes, her rival, died. The two children Agnes had borne to the king were declared legitimate by the Pope, because the king had married her in good faith after the decision of the bishops at Compiègne.[1] The Pope was much blamed for too great indulgence towards the king, who, on the other hand, complained of his severity. Innocent strove to convince him how little ground he had for such a complaint by referring him to former examples, assuring him that he could not, by deviating from the right path, offend a Heavenly King for the sake of an earthly one.[2]

[1] Hefele, pp. 707, 708.
[2] Innoc. III. l. v. Ep. 50, pp. 1015-1018.

§ 11.

The oppressed queen, in 1203, had recourse once more to the Pope, as 'Vicar of Christ and successor of St. Peter—as the colleague of St. Paul, who had not feared to slay the incestuous Corinthian with the sword of the Spirit—as the zealous imitator of Phinees—as the mountain to which all must lift their eyes, the protector of the oppressed, the refuge of the unfortunate.' She laid her wrongs before him, and besought him to obtain for her release and justice.[1] Innocent III. sent repeated and most pressing letters to the king concerning the queen's hard lot, endeavouring also to influence him through his envoys.[2] In 1205 he wrote to console the queen,[3] but did not conceal from her that up to that time his efforts to move her husband had been fruitless; the latter not only persisted in demanding a divorce on account of relationship, but also be-

cause he said he was prevented by witchcraft (maleficium) from approaching her. In 1207, Innocent endeavoured anew to induce Philip to take her back, or at any rate to cause her to receive better treatment;[4] and soon after the king informed him that he would endeavour to live with her in wedlock, but that if he did not succeed this endeavour was not to prejudice his suit for divorce. The Pope agreed,[5] and in 1208 deputed Cardinal Gualdi for further negotiations.[6] Philip Augustus laid before the cardinal a third reason for divorce—that his marriage with Ingeburge had never been consummated, and that she wished to become a nun (for a declaration to this effect had been forced from the imprisoned queen), and that therefore his marriage-bonds might be loosed. He begged that the Pope[7] would without any further appeal empower his legate to dissolve the marriage, whether it were on account of the alleged witchcraft, or on account of Ingeburge's desire for a religious profession, or for any other canonical reason; he was ready to swear that the marriage had never been consummated. Innocent replied in two letters: in the shorter of the two he recommended him to desist from his plan of getting a divorce, and to take back Ingeburge; in the other and longer letter he pointed out to him that his case, as now represented, did not correspond with former statements. He laid stress upon Ingeburge's assertion that she had lived with him as his wife, and that Philip Augustus had admitted having at least endeavoured to behave to her as such. Her resolution to enter the cloister was not freely made, but was the result of an imprisonment that had lasted eight years, and was accepted by her as affording a prospect of more happiness; for the rest, he authorised the legate to institute further judicial inquiries.[8] In the mean time the only change was that Ingeburge was treated in a more becoming fashion. The statement that the marriage had never been consummated was a matter of grave doubt. Finally, Ingeburge was induced to remove the doubt by a declaration made before two creditable witnesses. Then the king had again recourse to the Holy See.[9] But the Pope, having consoled Ingeburge, anew declared in 1212 that, after mature deliberation upon the subject, he

could not dissolve the king's marriage, and entreated Philip Augustus not to weary him with fresh solicitations concerning it.[10] In the following year the king effected a honest reconciliation with Ingeburge, and continued to live with her in harmony. In his will he openly testified to the esteem in which he held her. Thus the firmness of the Pope obtained at length the victory.[11]

[1] L. vi. Ep. 85. Migne, ccxv. pp. 86-88.
[2] L. vi. Ep. 86, 182, pp. 88 seq. 198 seq. Hefele, p. 768.
[3] L. viii. Ep. 113, p. 680.
[4] L. x. Ep. 42, pp. 1135, 1136.
[5] L. x. Ep. 176, p. 1266.
[6] L. xi. Ep. 86, p. 1403.
[7] L. xi. Ep. 180, p. 1498.
[8] L. xi. Ep. 181-183, pp. 1494-1499.
[9] Hefele, p. 770.
[10] L. xv. Ep. 106, 107, pp. 617, 618.
[11] Hurter, Innoc. III. vol. ii. p. 477 seq. Hefele, l.c.

§ 12.

In the same pontificate there were several other cases of important suits concerning the marriages of princes. When the King of Leon incestuously married the daughter of the King of Portugal, Pope Celestine III. excommunicated the latter as well as the married pair, and laid their dominions under an interdict. This connection was in consequence abandoned. But then the king married his own niece, the daughter of the King of Castile. Innocent III. despatched the legate Rainer to Spain,[1] who repeatedly but ineffectually admonished the king to dissolve the union. He appointed time and place, awaited him beyond the designated period, and then, as all was of no avail, finally laid upon him the ban, and the interdict upon the country. He took no measures against the King of Castile, who did not resist the Papal ordinances, and was willing, on the contrary, to receive his daughter back again. Then the Archbishop of Toledo and the Bishop of Valencia appeared at the chair of the Apostles on the part of the King of Castile, and the Bishop of Zamola on the part of the King of Leon, to request a dispensation for the King of Leon and the Princess of

Castile.[2] As their request, according to the strict practice of that day, was not granted them, they besought that the interdict might be removed, since it exposed the kingdom to a threefold danger—from heretics, from Saracens, and also from Christians.[3] The Pope, whilst fully estimating the evils represented to him, thought it not fitting to reverse a canonical sentence until due satisfaction was made.[4] He was unwilling to make so great a deviation from the letter of the law; he did not wish to appear to act with partiality, and suffer a bad example to be given to other countries. He allowed a partial mitigation, because where many participate in the punishment its severity may be relaxed, so as by clemency to avert greater evils,[5] and he partially limited the interdict in order to prove spirits, and to see whether the consequence he anticipated would arise.[6] Divine worship was once more permitted,[7] and later Innocent III. gave permission for sermons to be preached.[8] (In general, from his time forward the interdict was much mitigated.) Still, however, no Mass could be solemnised in the presence of the excommunicated pair or of their counsellors. In the mean time it appeared that the King of Castile had made only a feigned submission. The kingdom of Leon had been forced to do allegiance to the son of this incestuous marriage, and the king of that country was loth to renounce the towns he had received in dowry with his wife.[9] But in 1204 the Princess of Castile submitted herself to the Church, left the King of Leon, and applied for absolution; soon after her example was followed by the king, and the only matter then remaining for settlement was the restitution of the places received in dowry. The bishops were empowered to confer the absolution; and thus in this case as well as in the last the interdict fulfilled its purpose.[10]

[1] Innoc. III. l. i. Ep. 92, 93, 125.

[2] Innoc. III. l. ii. Ep. 75, p. 610 seq., to the Archbishop of Compostella, where the event is narrated in detail.

[3] L.c. p. 626: 'Asseverantes, quod ex eo triplex toti regno periculum ab haereticis, Saracenis et Christianis etiam imminebat. 1. *Ab haereticis:* quia cum per interdictum ipsum clausa essent in partibus illis ora pastorum, non poterant fideles per eos contra haereticos instrui et ad resistendum eis

aliquatenus informari, unde cum ex hoc tum quia rex Leg. ab Ecclesia se asserens aggravatum eis minime resistebat, invalescebant contra fideles haeretici et in regno ipsi haereses variae pullulabant. 2. *A Saracenis:* quoniam cum per exhortationes et remissiones Ecclesiae Hispaniarum populus consuevisset ad expugnationem paganorum induci, cessante praedicatorum officio, populi etiam devotio tepescebat, quia cum se cum principe suo, quoad interdictum, eidem videret poenae subjectum, a culpa, cui vel tacendo consenserat, forte non se credebat immunem, propter quod minus circa debellationem Saracenorum fervebat, ne decederet in peccato. 3. *A Catholicis:* quia cum clerici laicis spiritualia ministrare non possent, laici clericis temporalia subtrahebant, oblationes, primitias et decimas detinentes; unde cum clerici pro majore parte in partibus illis consueverint sustentari, eis subtractis non solum mendicare, sed fodere et servire Judaeis in Ecclesiae et totius christianitatis opprobrium cogebantur.'

[4] The Pope proves it thus: '*Ex animo* quidem, quia sicut Deus perhibet testimonium conscientiae nostrae, ad hoc nonnisi justitiae et honestatis obtentu processimus, cum ex contrario potius contra nos oriri praesumptio potuisset, si tam detestabile facinus duxissemus in patientia tolerandum. *Ex ordine*, quia dictus frater R. post commonitiones et dilationes legitimas tandem districtione percussit ecclesiastica contumacem. *Ex causa:* exemplo divino et humano. *Divino*, quia cum David in populi numeratione peccasset, Dominus in populum vasa sui furoris effudit, unde idem David dixisse legitur peccatum suum Domino confitendo: *Ego sum qui peccavi .... isti, qui oves sunt, quid fecerunt? Auferatur, obsecro, facies tua, Domine a populo tuo* (2 Reg. xxiv. 17); *humano:* cum jamdiu praedecessor noster in praedictos Portugalliae et Legionis reges et regna ipsorum praedictas sententias curaverit promulgare.'

[5] Quia ubi multitudo est in causa, detrahendum est aliquid severitati, ut majoribus malis sanandis charitas sincera subveniat.

[6] Relaxavimus ergo, non in totum, sed in una parte solummodo interdictum, nec perpetuo, sed ad tempus, quamdiu sc. nobis placuerit et viderimus expedire.

[7] Ut in regno ipso divina celebrentur officia. Only religious burial (that is, the customary funeral rites) was not allowed. Well might this appear 'absonum,' the Pope says. But the Conc. Later. iii. c. 20, ordains that those who are killed in tournaments should be denied Christian burial, even if by repentance they have made their peace with the Church; and in this manner the mourning of the Church found special expression.

[8] C. 43, Responso, v. 39, de Sent. Excom.

[9] L. vi. Ep. 80, ad Reg. Castil. p. 82.

[10] L. vii. Ep. 93, 94, pp. 373-376.

Part II. The Princes recognised Ecclesiastical Jurisdiction.

§ 1. The right of censure over them gradually reserved for the Pope. § 2. Recognition of Papal authority. § 3. Titles of honour and intercession with the Popes. § 4-7. Letters of princes. § 8. The Pope as protector of kingdoms. § 9. Papal ratifications of treaties, laws, donations, &c. § 10. Louis IX. of France. § 11. Resistance of individual princes. § 12. Their superiority to all laws. § 13. Ignorance of princes was not fostered by the Church.

§ 1.

The princes recognised that they were subject to the jurisdiction of the Church. Charles the Bald, at the meeting at Savonnières in 859, declared in the statement of grievances against Archbishop Wenilo of Sens, that as a crowned king he could be deprived of his kingdom by no one, at least not before the bishops had been heard on the question and had passed sentence; for by them he had been crowned, and to their paternal correction and chastisements he was willing to submit.[1] In the reign of his father Louis the Pious the conviction prevailed that the king could only be deposed by the sentence of the bishops,[2] and in the dissensions of his sons the authority of the Church was the strongest weapon each could use against his rival. The bishops who had called the war of Louis and Charles against their brother the Emperor Lothair I. a righteous war declared at a Synod at Aix-la-Chapelle in 842, that Lothair had forfeited the kingdom by his sins, and that God had given it to his brothers. These were, however, called upon, before undertaking the actual government of his States, to swear that their government should not be arbitrary, but regulated by the will of God.[3] This view of the power of the bishops was important in so many ways, that later French historians hit on the notion that the subjection of kings to ecclesiastical authority was an error introduced into France by the policy of Pipin and his successors, with the view of enhancing their authority in the eyes of the people by giving it a sacred character.[4] When, after the death of Lothair II. in 869, the claim of his brother the Emperor Louis II. to his possessions was disregarded by Louis the German and

Charles the Bald, Louis II. appealed to the intervention of Pope Hadrian II., who gave a decision in his favour, which, however, was not acted upon.[5]

This principle continued in full force. The terms in which Fulco of Rheims, in 898, endeavoured to withdraw Charles the Simple from the proposed alliance with the Normans[6] presupposed an ecclesiastical authority not merely to excommunicate the king, but to withdraw from him the allegiance of his subjects.[7] Rulers, however, sought more and more to withdraw their dominions from the penal jurisdiction of the bishops, who had several times inflicted censures which were unjust, and which the Pope had reversed.[8] And thus it came about that the right to excommunicate kings and princes was reserved to the Pope.[9]

[1] Libell. Proclamationis. Hard. Conc. v. 488. Hefele, iv. p. 197.

[2] Hefele, iv. pp. 78, 79.

[3] Nithard, de Dissensionibus Filiorum Ludovici Pii, l. iii. iv. Pertz, M. G. ii. 6, 62, 668. Cf. Fleury, Hist. Ecclés. t. x. l. xlviii. n. 11; l. xlix. n. 46; Hefele, l.c. pp. 98, 99.

[4] Moreau, Discours sur l'Histoire de France, t. ii. pp. 22, 30. Daniel, Hist. de France, t. ii. pp. 335, 388, 393. Garnier, Hist. de France, t. xxi. p. 189. Fleury, l.c. l. xlix. n. 46; t. xiii. disc. 3, n. 10.

[5] Baron. a. 869, n. 93 seq.

[6] Flodoard, Hist. Rhems. l. iv. c. v.

[7] Contra Bossuet. Defens. P. i. l. ii. p. 285 seq. Vide Bianchi, t. ii. l. iv. § 9, n. 5, p. 122 seq.

[8] *E.g.* Innocent III. (l. xii. Ep. 37, p. 46), that of the Bishop of Soissons.

[9] Kober, der Kirchenbann, pp. 122, 123. Schmalzgrueber, in l. v. Decret. tit. 39, § 1, n. 40, who cites for this Avila, Palao, Reiffenstuel, Wiestner, La Croix. At first the Popes granted to individual princes particular privileges, that they and their lands should not be visited by ban or interdict 'absque rationabili et manifesta causa,' or that it should be only after previous admonition, and that when they had appealed to Rome any sentence delivered against them should be null; *e.g.* Innocent III. to the Landgrave of Thuringia (l. vi. Ep. 42, p. 46), and to the Emperor Henry of Constantinople (l. xi. Ep. 120, pp. 1216, 1217). The Popes then granted to individual princes the privilege of not being visited with censure by the bishop or Papal legate, which was in practice and in the teaching of canonists extended to all reigning princes. A privilege of the latter kind was conferred by Urban II. upon King Peter I. of Aragon, 1095; it was confirmed by Innocent III. in 1213 (l. xvi. Ep. 87, p. 888). This Pope in 1214 forbad that King John of England, who had become his vassal, should be censured 'sine speciali mandato Sedes apostolicae' (Supplem. Ep. 185, Migne, ccxvii. p. 226).

§ 2.

The words of Constantine the Great, related by Rufinus, were often repeated ; he had said he did not wish to pass judgment on bishops, because they had authority to judge him.[1] Familiar also was the readiness with which the Emperor Theodosius had submitted to the judgment of St. Ambrose.[2] Henry IV. of Germany acknowledged that he might be deposed by the Church for heresy or apostasy.[3] Even Frederick Barbarossa admitted the right of the bishops to judge him,[4] although at Pavia in 1160, appealing to the example of Constantine, Theodosius, and Justinian, he claimed the right of convening a General Council. The French King Louis VI., in 1119, laid his complaints and grievances against Henry I. of England, before Pope Callixtus II. at the Council of Rheims.[5] Henry's nephew Stephen of Blois begged Innocent III. to ratify his ascent of the throne; later he was forced to undergo many humiliations from the bishops on account of unjust actions committed by him against the Church.[6] Queen Maria of Aragon laid a complaint before Pope Innocent III.[7] against the Count Montpellier, for having retained some castles and places belonging to her dowry. The count, on the other hand, complained that she had taken possession of his dominions.[8] The Counts of Flanders repeatedly sought protection in Rome against the superior strength of the French king; on December 29, 1299, the Flemish envoys called the Pope universal judge in things spiritual and temporal, by reason of his position as Vicar of Christ, and of his authority over the emperor, the foremost among civil princes.[9] The famous Abbot Wibald, for many years adviser of the Kings of Germany, who restrained Henry son of Conrad III. from hasty measures against Papal decrees,[10] wrote thus in 1148 to Pope Eugenius III.: 'With you is the manna, with you is the rod (of Aaron), with you is canonical dispensation, with you is the interpretation of laws, with you is the moderation of rules, with you is wine and oil; it is your privilege to spare the submissive and to resist the proud.'[11]

[1] Rufin. H. E. i. 2: 'Deus vos constituit sacerdotes et potestatem dedit de nobis quoque judicandi, et ideo nos a vobis recte judicamur, vos

autem non potestis ab hominibus judicari. . . Vos etenim a Deo nobis dati estis *Dii* et conveniens non est ut homo judicet Deos, sed ille solus, de quo scriptum est: *Deus stetit in synagoga Deorum, in medio autem Deos dijudicat.*' Cf. Soz. H. E. v. 17; Gelas. Cyzicen, Hist. Conc. Nic. l. ii. c. viii. (Migne, PP. gr. lxxxv. p. 1244). In the epistle from Constantine to the bishops concerning the Donatists, in the Append. ad Optat. Milevit. ed. Paris, Labbé, Conc. i. p. 1455, ed. Ven., it is said: 'Dico enim, ut se veritas habet, sacerdotum judicium ita debet haberi, ac si ipse Dominus residens judicet.'

[2] Joh. Saresbur. Polycrat. l. iv. c. vi. p. 524.

[3] Mansi, xx. p. 472 seq.: 'Nec pro aliquo crimine nisi ab fide, quod absit, exorbitaverim, deponendum.' Cf. Baron. a. 1076, n. 20; Fleury, Hist. Eccl. t. xiii. l. lxiii. n. 52; Launojus, de Simonia, Observ. 3, 4, 5, 11, Opp. t. ii. P. ii.

[4] Radevic. l. ii. c. lxviii.: 'Deus constituit vos sacerdotes et potestatem vobis dedit de nobis quoque judicandi.'

[5] Hefele, Conc. v. p. 315.

[6] Ib. l.c. pp. 386, 394 seq. 435 seq.

[7] Innoc. III. l. xvi. Ep. 23, pp. 814, 815.

[8] Ib. l. xv. Ep. 104, p. 615.

[9] Kervyn de Lettenhove, Histoire de Flandre, 1847, t. ii. pp. 421, 604 seq.

[10] Wibald, Ep. 73 (Migne, clxxxix. p. 1173), to Henry: 'Timemus namque, ne in Romanam Ecclesiam aliquorum suggestione impingatis, quod vobis esse posset lapis offensionis et petra scandali.' Ep. 79, p. 1178, to his sister: 'Juniorem dominum regem nostrum quaedam non exiles personae ad haec dedita opera impellebant, ut in quibusdam dominum Papam offenderet et canonicis decretis contrairet, quod ne fieret, Dei largissima bonitate et nostro studio praeventum est et in meliorem statum omnia commutata.'

[11] Novit dextera vestra 'parcere subjectis et debellare superbos' (Virgil, Aen. vi. 853). Wibald, Ep. 114, p. 1209.

§ 3.

Usurpers often sought to make their position more secure by means of the Pope's authority; the usurper Suerus did this in Norway by appealing to a counterfeit Bull of Celestine III. Innocent III. reproved him sharply; but after his death acknowledged his son, who was a much better man.[1] Rightful princes frequently besought the Popes for special titles of honour;[2] even Henry VIII. applied for one, and received the title of 'Defender of the Faith';[3] and later still the King of Portugal received that of 'Most faithful King.'[4] At an earlier period, Charles the Bald, and after him his son Louis, received from John VIII. the

title and dignity of 'privy councillor,'[5] conferred also at that time upon bishops. Kings and princes often besought pious and influential members of the regular clergy to be their mediators with the Holy See, as, for example, King Alphonso of Spain[6] besought the Abbot of Clugni, Peter the Venerable. In 1142, St. Bernard complained to Louis VII. that he had busied himself about the king's affairs with the Holy See until he had almost done violence to his conscience and incurred the just anger of the Pope, and that now the king's continual excesses led him to repent of what he had done.[7]

[1] Innoc. III. l. i. Ep. 382-384, p. 362 seq. Supplem. Ep. 11 (Migne, ccxvii. p. 36). Cf. l. vi. Ep. 214, p. 241 seq.; Gesta Innoc. n. 59, p. cviii. seq.

[2] The most ancient of these titles is undoubtedly that of the kings of France, 'Rex Christianissimus.'

[3] Pallavic. Hist. Conc. Trid. l. ii. c. i. n. 8. Rymer, Foed. xiii. 756. Cf. xiv. 13, Conc. M. Brit. iii. 693, 702; Gieseler, Kirchengeschichte, iii. ii. p. 3. No. 4.

[4] Bened. XIV. Const. Maxima, 23 Dec. 1748.

[5] John VIII. Ep. 87, ad Ludov. Balbum: 'Te quoque, carissime fili ad vicem genitoris vestri D. Caroli perpetui Imperatoris Augusti, a secretis constituo meum consiliarium.' Cf. Thomassin, P. i. l. ii. c. ci. n. 15.

[6] Petrus Vener. l. iv. Ep. 9, pp. 313, 314, ad Innocent II.: 'Imperator Hispanus, magnus Christiani populi princeps, . . . licet apud pietatem vestram multum possit et posse debeat, tamen quia inter modernos reges praecipuus amicus et benefactor Cluniacensis ecclesiae est, me ad praesens *mediatorem et apud vos intercessorem* elegit.' The same abbot also interceded for King Louis of France and for the town of Pisa (ib. Ep. 3, p. 304; Ep. 44, p. 462).

[7] Bern. Ep. 221, c. iii. p. 387, ed. Migne. Cf. Ep. 224, c. i. p. 392, ad Steph. Ep. Praenest.

§ 4.

The letters sent to the Pope from even the most powerful princes testify the esteem in which they held the dignity and power of the Holy See. Ferdinand, King of Spain, when he declared in favour of Alexander III. against the Antipope set up by Barbarossa, informed the Pope of his adherence in these words: 'I have recognised your dominion with my whole kingdom.'[1] It was the custom in letters of congratulation sent to a new Pope on his accession to lay all the most important affairs of Christendom on his heart.[2] Otho of Brunswick,[3] elected

King of Germany, expresses a special loyalty in his letters, as was the case also in those of the princes and nobles who interceded for him with Pope Innocent III.[4] They extolled the justice and wisdom of the Holy See, which Otho's rival, Philip,[5] also did in 1207, when he petitioned for the promotion of the Danish Bishop Waldemar[6] to the see of Bremen. Whether the decrees published by the General Councils of the Lateran and of Lyons had or had not the influence which some authors have ascribed to them,[7] the recognition they met with shows the conviction entertained by the most powerful princes of the day of the predominant authority of the Church.

[1] 'Vestrum cum toto regno meo suscepi dominium' (Migne, PP. Lat. t. cc. p. 1370, n. *x*.).

[2] Vide the formula of Petr. Bles. Ep. 118 (Migne, ccvii. pp. 463, 464).

[3] Innoc. III. Reg. iii. p. 999; Ep. 19, p. 1016, in which he venerates the Pope as father and lord; Ep. 20, p. 1016 seq.; Ep. 53, 54, 81, 106, p. 1054 seq. 1087 seq. 1108; Ep. 77, 187, 189, 190, p. 1084 seq. 1167 seq.

[4] King Richard of England engages for him: 'Quod vobis tamquam unico domino suo et Ecclesiae Rom. debitam et juratam fidelitatem impendet' (Reg. Ep. 4, p. 1000 seq. Cf. Ep. 5-10, p. 1001 seq.).

[5] Innoc. III. l. x. Ep. 215, p. 1323: 'Cum plene cuilibet constare possit, quod ab illo fonte, in quo totius spiritualis juris et ecclesiastici plenitudo consistit, nihil aliud procedere possit vel abinde derivari, nisi quod sanctum sit et quod contineat aequitatem, semper hoc inde sperandum est, per quod unicuique consulatur, conservata tamen huic fonti totius suae auctoritatis integritate.'

[6] This Bishop Waldemar had been imprisoned on account of a conspiracy in Denmark, was at length, upon the Pope's remonstrance, sent to Rome, but on departing thence without leave was excommunicated and deprived of his see. Innoc. III. l. vi. Ep. 181, p. 194 seq.; l. viii. Ep. 192, 193, p. 768 seq. (respectful letter of the King of Denmark to the Pope and the Pope's answer); l. x. Ep. 41, p. 1134; l. xi. Ep. 10, p. 1346; l. xii. Ep. 63, p. 69 seq.

[7] Cf. suprà, Essay vi. § 15, 16 seq.

§ 5.

When Henry II. was persecuting St. Thomas of Canterbury, there was much anger at the court of France, because of the apparent delay of Pope Alexander III. in coming to the assistance of the archbishop, and using his authority against the king. The nobles and clergy sent letters of remonstrance to the Holy See,[1]

and King Louis VII.[2] and his queen[3] also wrote to the Pope on the subject. After the murder of the archbishop, Louis required that severe measures should be taken against Henry.[4] And later he demanded of the Pope a reform of existing abuses, according to the authority confided to him, by virtue of which he was set as a light for the nations, above all men, high and low, that everywhere he might punish evildoers. 'For your Holiness, to whom so great a power of action is given, can carry out your pious intentions. For who believeth not your testimony? Who hearkeneth not to your word? Who submitteth not to your command? If any venture to resist you, let only the high praises of God and words of power be in your mouth, to execute vengeance upon the heathen and punishments upon the people; to bind their kings with chains, and their nobles with fetters of iron (Psalm cxlix. 7, 8).'[5] Louis VII. agreed with John of Salisbury[6] in believing that the Pope was entitled and empowered to chastise all crimes in princes, and to free the Church of them, if their yoke oppressed her; he was firmly convinced that his kingly office obliged him to use the sword confided to him by God, for the defence of the Church and the overthrow of her oppressors.[7]

[1] John of Salisbury, who was at that time living in France, Ep. 198, ad Alex. III. (Migne, cxcix. p. 218): 'Utinam essent aures vestrae ad ora regis et optimatum Franciae! Utinam audiretis, quomodo vobis insultant hostes Ecclesiae et fere universi detrahunt vobis!' William of Chartres wrote to the Pope (Migne, cc. p. 1409, n. 50): 'Exspectat christianissimus rex Francorum, exspectant Ecclesiae et optimates regni, quam opem adversus tyrannum saevientem feretis Archiepiscopo pro justitia exulanti.' Philip, Count of Flanders, wrote (ib. p. 1393, n. 36): 'Exsurgatis in ira vestra et inimicos Ecclesiae debellate, et sic erit Deus vobiscum.'

[2] Migne, t. cc. p. 1376, n. 17. The king, moreover, says: 'Non est nostrum, vos, qui dominus estis, reprehendere.'

[3] Ib. p. 1380, n. 22. Here it is said: 'Vobis sicut patri loquar et domino, cujus honorem dominus meus rex et ego et totum regnum nostrum desideramus ut proprium.' The letter does not merely complain that the Pope lends insufficient protection to the archbishop, but also that the King of England receives 'auctoritatem impune peccandi et archiepiscopum perpetuo proscribendi.'

[4] Ib. p. 1378, n. 20: 'Excitetur exquisitae genus justitiae, denudetur gladius Petri in ultionem Cantuarensis martyris, quia sanguis ejus pro universali clamat Ecclesia, non tam sibi quam universae Ecclesiae conquerens de vindicta.'

[5] Ib. pp. 1378, 1379, n. 21: 'Profecto supernus ille mortalitatis nostrae moderator et arbiter ideo vos in diem hanc sic, ut confidimus, reservavit, ut accepto tempore *justitias judicetis* et *ponatis prava in directa et aspera in vias planas* (Luc. iii. 5). . . . Date simul et vos voci vestrae vocem virtutis, ut audiant et intelligant universi, quod posuerit vos Dominus in lucem gentium, ut sitis salus ejus usque ad fines terrae (Isai. xlix. 6). Praesto est enim piae intentioni vestrae operandi facultas, cui tanta conceditur sanctae operationis auctoritas. . . . Quis enim non credit auditui vestro? Quis non obedit verbo? Quis non obtemperat jussioni? Quod etsi reluctari quispiam pro sua malignitate praesumpserit, sonent *exsultationes* (al. exaltationes) *Dei in faucibus vestris ad faciendam vindictam in nationibus, increpationes in populis, ad alligandos reges eorum in compedibus et nobiles eorum in manicis ferreis.*' St. Bernard also applies this passage to the Pope.

[6] Joh. Saresb. Ep. 201, p. 224, ad Albert. Card.: 'Si Ecclesia Romana voluerit et de Domino non diffidat, eum (Henricum), facile perdomabit.' Ep. 219, p. 244, ad Alex. III.: 'Si illa (Rom. Eccl.) post Deum decreverit salvare nos, continuo liberabimur. Si manus erexeritis, sternetur Amalech, et qui vos Pharaoni dedit in Deum, dijiciet omnes adversarios Ecclesiae a facie vestra.'

[7] Ludovic. VII. Ep. a. 1171, ap. Baluz. Addit. ad l. ii. de Concordia Petri de Marca, c. xii. post § 8: 'Digna vox est majestate regnantis, Dei servum et Ecclesiae defensorem et principem profiteri. Adeo de divinae promissionis et clementiae culmine nostra pendet auctoritas, ut ad honorem, laudem et gloriam ipsius et opera nostra et ipsorum intentionem operum referamus. Inde est, quod commissum a Deo nobis gladium et in defensionem ecclesiarum et in oppressionem debemus ac volumus exercere tyrannorum.'

§ 6.

After the murder of the archbishop, Henry II. sent envoys to the Pope, deputed to convey his horror at the crime, and his repentance for the hasty expressions which had given occasion to it. In September 1172, he was reconciled to the Church on his undertaking to fulfil the required conditions.[1] Before the crime of the 29th December 1170 he had shown himself very submissive to the Pope,[2] and he manifested the same submission in a still higher degree when, in 1173, he besought the assistance of the Pope against his unruly sons; he acknowledged himself to be a vassal of the Pope, and promised obedience to all his commands.[3] His sons also applied to the Pope with offers of all possible concessions; but the Pope's desire was not to side with one party or the other, but to reconcile them.[4] The court of England recognised even more strikingly the extent of the power

of the Holy See, when Richard Cœur de Lion was taken prisoner by Leopold, Duke of Austria, at the command of the Emperor Henry VI. in 1192, and kept in confinement till 1194. Queen Eleanor, his mother, sought to obtain from Pope Celestine III. his release from this unjust imprisonment. She implored the Pope, in letters composed by the learned Peter of Blois,[5] to aid her by excommunicating those guilty of the act, and by exerting all his authority on her behalf. She spared not even reproaches to move him, saying: 'What excuses can cover your negligence and apathy? for all the world knows you have the power to aid my son; the will only is wanting. Has God not entrusted the guidance of every empire and every power to the Apostle Peter, and in him to you? No king, no emperor, no duke is free from the yoke of your jurisdiction. Where is now the zeal of Phinees? Let it be seen that the two-edged swords have not been put in vain into your hands, and those of the other bishops.'[6] 'But you will say,' she continues, 'that this authority is given you over souls, not over bodies. Let it be so; it is sufficient for us that you should bind the souls of those who keep my son chained in a dungeon. It is easy for you to loose his chains if the fear of God shall drive away the fear of men. Restore to me my son, O man of God, if indeed you be a man of God, and not a man of blood.'[7]

[1] Cf. Hefele, Conc. v. pp. 603, 611 seq.

[2] Migne, CC. pp. 1383, 1384, n. 26: 'Salutem et debitam in Christo subjectionem. . . . Vos in patrem et dominum . . . . in vestris legatis recepi solemnitate debita et veneratione.' With even greater humility towards St. Thomas, n. 27, pp. 1384, 1385. He calls himself, n. 30, p. 1388, 'juri semper stare paratissimum.'

[3] Ib. pp. 1389, 1390, n. 32: 'Quoniam ergo vos extulit Deus in eminentiam officii pastoralis ad dandam scientiam salutis plebi ejus (Luc. i. 77), licet absens corpore, praesens tamen animo, me vestris advolvo genibus, consilium salutare deposcens. Vestrae jurisdictionis est regnum Angliae et quantum ad feudatarii juris obligationem vobis dumtaxat obnoxius teneor. Experiatur Anglia, quid possit Rom. Pontifex et quia materialibus armis non utitur, patrimonium B. Petri spirituali gladio tueatur. . . . In fide illius, per quem reges regnant, vestrae magnitudini promitto me et dispositioni vestrae in omnibus pariturum.' Henry's oath, ap. Rymer, Foed. i. 27; Muratori, Rer. It. Scr. iii. 463: 'Juramus, quod a Domino P. Alexandro et successoribus ejus catholicis recipiemus et tenebimus regnum Angliae.'

[4] Hefele, v. p. 613.

[5] Petri Blesens, Ep. 144, 145, 146, Opp. p. 227 seq. Rymer, Foedera, i. pp. 72, 78. Cf. Fleury, op. cit. t. xv. l. lxxiv. n. 41; Michaud, Hist. des Croisades, P. ii. p. 862.

[6] Petri Bles. Ep. 145, p. 228.

[7] Ib. Ep. 146, p. 230. St. Bernard once wrote thus to Innocent II., Ep. 198, p. 366: 'A vobis id omnimodis flagitamus, quod aliunde frustra tentatum est. Circumspeximus et non erat auxiliator. Ventum est ad commune refugium, illo confugimus, ibi confidimus liberari. *Tantum adsit pietas; nam facultas non deest.* Et quidem ex privilegio Sedis apostolicae constat, summam rerum ad vestram potissimum respicere *summam auctoritatem et plenariam potestatem.* Verum hoc inter cetera vestri singularis primatus insignia specialius nobiliusque nobilitat vestrum et inclytum reddit Apostolatum, si eripitis pauperem de manu fortiorum ejus. Nulla meo judicio in corona vestra pretiosior gemma zelo illo vestro, quo aemulari consuevistis oppressos nec relinquitis virgam peccatorum super sortem justorum, nimirum propter illud, quod sequitur: Ut non extendant justi ad iniquitatem manus suas (Ps. cxxiv. 3), &c.'

§ 7.

When Richard I. had been set at liberty, he besought the Holy See to obtain for him the restitution of the sum of money which Archduke Leopold and the Emperor Henry VI. had extorted from him as his ransom; also to induce the King of France to relinquish some fortresses and other possessions which he had seized during his absence, and to prevail upon the King of Navarre not to withhold from him the castles which his father had agreed to give him as the dowry of his daughter, Richard's wife. Innocent III. warmly espoused his cause. He commissioned the Archbishop of Magdeburg to engage the brother of the late emperor to make restitution of the king's ransom.[1] He threatened to excommunicate the King of Navarre if he did not relinquish the castles in question,[2] and addressed himself in a similar manner to the King of France. The latter replied that Richard had violated former treaties, had forsaken his sister and married another, had taken all to himself the property of King Tancred and the treasure of Cyprus, which was theirs in common, and had been the cause of much personal injury to himself. Richard's envoys maintained that Philip had been the first to act unjustly at Messina, and had brought forward vain complaints. The Pope[3] communicated these counter-charges to King Richard, and

[14] Ib. l. xiii. Ep. 82, pp. 279, 280: 'Boleslaus quondam Poloniae dux .... hoc perpetuis temporibus observari praecipiens per Sedem Apostolicam obtinuit approbari.'

[15] L. xiv. Ep. 58, p. 423: 'Quae omnia suppliciter postulasti per Sedem Apostolicam confirmari.' Cf. ib. Ep. 59, 60, 115-118, pp. 424 seq. 473 seq.

[16] L. xiii. Ep. 34, 35, p. 227.

[17] L. xiii. Ep. 84, p. 281 seq.

[18] L. xiii. Ep. 176, n. 345, 346: 'Qui etiam rex nobis humiliter supplicavit ut ad stabilitatem perpetuam concessionem ipsius apostolico dignaremur munimine roborare.' Earlier examples of this kind are numerous. Conrad III., in 1146, wrote thus to Eugenius III.: 'Rogamus, ut quod eidem abbati (Wibaldo) et Corbeiensi monasterio de duabus praefatis cellis legitima donatione per praecepti paginam confirmavimus, vos vestri privilegii scripto roborare non abnuatis' (Wibald. Ep. 13, Migne, clxxxix. p. 1137). The monks of Corvei in the same way sought the Papal ratification (ib. Ep. 15, p. 1139).

[19] L. xiv. Ep. 28, p. 404.

§ 10.

Until the close of the Middle Ages, and even beyond, the letters from kings to Popes testify the deepest awe and reverence. Louis XI. of France,[1] on the 27th November 1461, wrote thus to Pius II., who had required of him the abolition of the Pragmatic Sanction of 1438: 'Knowing as we do that God alone by His providence can well provide for the concerns of man, and that cities and kingdoms are better fortified and defended by religion than by arms and troops, we entertain towards you, the Vicar of the living God, such reverence that we are fully resolved to hear your sublime admonitions, especially in ecclesiastical matters, as the voice of the Shepherd, and obey it. . . . As we are convinced that obedience is better than sacrifice, we have given our consent to that which has been made known to us in your name, namely that the Pragmatic Sanction is antagonistic to you and to your office, because it took its rise in rebellion at a period of schism and revolt and separation from your See, and because it deprives you, from whom all sacred laws proceed, and in whom they have their origin, of all authority, loosening the bonds of all law and all justice. . . . Although some learned men sought to disprove this, and to dissuade us from the abrogation of the Pragmatic Sanction, we, holding and acknowledging that you are the prince of the whole Church, the primate of

religion, the shepherd of the Lord's flock, do follow your commands,[2] and adhere with full consent to the teaching of St. Peter. Therefore, according to your desire we abolish, proscribe, and abrogate the Pragmatic Sanction in our whole kingdom, in Dauphiné, and all our dominions.'[3] Leibnitz acknowledged that in essential matters the sovereigns of the Middle Ages were in accord with the principles upheld by the Popes. 'Nothing was more common,' he says, 'than to see kings submit their treaties to the censorship and correction of the Pope, as in the treaty of Bretigny, A.D. 1360, and that of Etaples, A.D. 1492.'[4] Even Voltaire, in the midst of much malicious exaggeration, acknowledged that every prince who wished to appropriate or receive back a domain addressed himself to the Pope as to his lord; also that no prince would venture newly to style himself king, nor would he be acknowledged as a king by other sovereigns, without the permission of the Pope.[5] Frederick III. interceded with Eugenius IV. in behalf of young Ladislaus, begging him not to countenance or confirm any other candidate for the kingdom of Hungary.[6]

[1] Hard. Conc. t. ix. p. 1640. Roscovány, Monum. t. i. pp. 113, 114, n. 144. Inter Epist. Aenese Sylv. n. 402, ed. vet. Nuremb. 1486.

[2] Teque jubentem sequimur.

[3] 'Tu enim, cum scias, quid auctoritate divinitus tibi tradita possis, quas pro regni nostri et ecclesiarum in eo tranquillitate postulabimus, non negliges res necessarias, poterisque semper quod optimum fuerit judicare.' The Pragmatic Sanction was not in fact completely abolished until the Concordat between Leo X. and Francis I.

[4] Leibnitz, diss. 1, de Auctorum publicorum usu. (Praef. ad cod. diplom. Jur. gent. 1693, f. Opp. t. iv. p. 299). Cf. Tract. de Jure suprem. P. iii. (Opp. iv. pp. 330, 401).

[5] Voltaire, Essai sur les Mœurs, t. ii. ch. xlvi.; t. iii. ch. lxiv. Cf. also Fleury, t. xiii. disc. 3, n. 10, 18; t. xix. disc. 7, n. 5; Michaud, Hist. de Croisades, t. iv. p. 163; t. vi. p. 225, 4th ed.

[6] Aenese Sylvii, Ep. 168, ed. vet. Nuremb.: 'Etsi non dubitemus Apostolicam Sedem tamquam veritatis doctricem justamque vitae magistram quorumlibet juribus favorabilem esse nullique prorsus injuriam facere, quia quidquid ab ejus solio manat, justitiae lancibus libratur et aequitatis: non tamen abs re fore putamus aliquo per nos scribi beatitudini tuae, quibus jus serenissimi principis Ladilai . . . . commendatum efficiamus et eorum qui ficta pro veris referunt impiis resistamus conatibus,' &c.

§ 11.

It is true that, appealing to their absolute independence, some princes in the Middle Ages defied[1] the Holy See for long periods, but generally only in the heat of passion and for their personal interests. The prevailing law is not to be estimated simply by deeds, but these should be judged by their conformity to the law. Powerful criminals may set at naught every sentence of condemnation. And thus excommunicated sovereigns might successfully employ the means at their disposal to gain the support of a large number of their subjects or even of foreign princes, and thus fortified, dispute the justice of a sentence which they would have fully recognised at another time or in a case not personal to themselves. Many times have Popes replied with dignity and patience to insulting letters from princes.[2] Their firmness led, in most cases, to their triumph, and brought powerful princes back to them repentant. Bishops, too, even in later mediæval times, have not unfrequently resisted Popes; but from the opposition of individuals no one can conclude that the rest of the episcopal body desired to dispute the Papal prerogative; thousands of facts and witnesses would render such a conclusion impossible. Still less can the words and deeds of individual sovereigns in direct conflict with Rome be held to weigh against repeated recognition of the power of the Holy See.

[1] In Caron, Remonstrantia Hibernorum, P. ii. cap. xi. pp. 101-104, a series of more or less convincing passages is collected.

[2] Gosselin, ii. pp. 147, 148, 373.

[3] *E.g.* the reply of Nicholas I., 865 and 866, to the letters of the Emperor Michael III. Ep. 8, 9 (Mansi, xv. 187 seq. 216 seq.); also Innocent III. to the insults of the tyrannical King of Portugal, l. xiv. Ep. 8, p. 383 seq.: 'Sancti Petri successores non consueverunt inferre convicia, sed ea exemplo Christi cum patientia sustinere.'

§ 12.

It is often objected[1] that many authors, and some even who wrote in the Middle Ages, lay down the principle that kings have no superior but God, and are restrained from sin only by

fear of Him. Ivo of Chartres[2] is cited as an instance of this. We need not now point out that Ivo (to whom, by the way, the 'decretum' in question cannot be attributed with certainty) brings forward also proofs of the superiority of the Church and of Papal jurisdiction over kings;[3] in the chapter on the crimes of kings he shows merely the gravity of their crimes and the difficulties in the way of their repentance. His words, 'God alone is the judge of kings,' if taken literally, would imply that their acts might not even incur ecclesiastical censure; and Bossuet would not wish them to mean this.[4] They refer primarily to the personal motives and intentions of princes in the acts of their administration,[5] and their true meaning is that there is no power over the prince to punish him *with the sword* for doing ill in those matters in which subjects owe him obedience. If any one thinks from such passages as this in the writings of the Fathers[6] to conclude that a prince sinning against the law of God cannot be called to account by the Church, he must also concede that the subjects of the king have over them no power but the king's, thus denying that God has established two powers.[7] Theologians tell us that princes are not under the law[8] as far as their coercive power is concerned, but are so with regard to their directive power.[9] Any one subordinate only to the Pope was in the Middle Ages regarded as subject only to God, for the Pope was considered as simply God's Vicar.[10] His power was not physical or material, but was a moral and spiritual power relying upon public opinion for its efficiency. If simple abbots and monks, such as St. Bernard, could upbraid kings for their crimes, threatening them with the justice of God,[11] the Pope could do so with the better right of one to whom by virtue of his office of chief pastor his position gave a higher power. No constitution had then adopted the principle 'that kings are above all human laws, and acknowledge no judge but God in matters ecclesiastical and civil.'[12]

[1] Bossuet, Def. P. i. l. iii. c. xiv. p. 303.

[2] Ivo, Decret. P. xvi. c. xlii.: 'Populi peccantes judicem metuunt, reges autem, nisi solo Dei timore metuque gehennae coerceantur, libere in praeceps ruunt,' to Isidor Hispal. Sent. l. iii. c. l. n. 4.

ESSAY VIII.

POPE GREGORY VII.

It has long prevailed as a custom amongst writers of history to treat the reign of Gregory VII. as the commencement of a new epoch of the Papacy; but this view is only correct in a partial sense. Earlier pontificates, particularly that of Nicholas I., whose contemporaries held him a second Elias,[1] and that of Benedict VIII., which has never yet been properly appreciated;[2] the deeds of Gregory's immediate predecessors, from Leo IX. onwards,[3] who were animated by a spirit like his own, and wanted but the opportunity to display a like courage in similar conflicts; the previous relations of Church and State in the Western countries;—all these facts show that if Gregory's pontificate is to be considered the commencement of a new epoch, it can only be so as the period of a reform in the relations between the ecclesiastical and civil orders, by the Church making a more extended exercise of the powers which she had long possessed in germ. That the Middle Ages should fulfil their mission it was necessary that the Papacy, obscured by the pernicious influence of Italian nobles and factions during the time of the Othos and of Henry III., should come once more to the light, with powers undiminished and influence unrestrained. The Papacy alone, not the empire—for Charles the Great and his times were gone for ever—could weld rival nations into unity, and protect and diffuse Christian morality and Christian law; the Papacy alone could guard the Church's dearest attributes of catholicity, liberty, and purity.[4] Before Gregory ascended the pontifical throne, everything had been prepared for the great conflict in which he was to engage.

Gregory's good intentions with regard to Church reform are generally admitted;[5] but he is reproached with having: I.

'surpassed the limits of the doctrine of Christ, in his claims to authority over princes and people, and with having disturbed the organisation of feudal States in the struggle about investitures;[6] he is said in this same struggle to have shown a calculating policy ill becoming the Vicar of Christ, and to have committed enormous blunders in his immoderate zeal; and that finally, having involved [?] Germany and Italy in a long and bloody civil war,[7] the conflict failed in attaining the end he contemplated.' II. He is said to have treated all princes as vassals of the Holy See;[8] and, III. to have claimed for the Pope the right to take and dispose of the possessions of private persons, as well as of empires, kingdoms, and principalities.

Let us examine these three charges.

[1] Reginon. Chron. Pertz. Scr. i. 579. Cf. Lammer, P. Nicholas I. und die Byz. Staatskirche, Berlin, 1857.

[2] Giesebrecht, Gesch. der Deutschen Kaiserzeit, ii. 172: 'History has hitherto erected no memorial to Benedict VIII., and yet he deserves one before other Popes. However fragmentary may be our sources of information regarding him, they are sufficient to show us the form of a man who recognised it as his mission to provide for the welfare of all Western Christianity, and who feared neither weariness nor exertion to restore to his high office the value it had lost. Benedict is the connecting link between the famous Popes of the time of the Othos, such as Gregory V. and Sylvester II., and their great successors Leo IX., Gregory VII., and Urban II. As this was overlooked, the gradual development of Papal power appeared less connected than it was in reality.'

[3] Will, Die Anfänge der Restauration der Kirche im eilften Jahrh. Marburg, 1859, 1864.

[4] The pious Abbot Gottfried of Vendôme lays stress on these three attributes above all, Tract. de Ord. Episc. (Migne, PP. Lat. clvii. p. 282). Opusc. vi. (ib. p. 222), he says: 'Ecclesia semper *Catholica*, *libera* et *casta* esse debet. . . . Quando vero Ecclesia saeculari potestati subjicitur, quae ante domina erat, ancilla efficitur, et quam Chr. D. dictavit in cruce et quasi propiis manibus de sanguine suo scripsit chartam, amittit. Hanc enim libertatis chartam Christus vindicavit in cruce et suae sponsae Ecclesiae per semetipsum dedit ut homines alios per peccatum factos diaboli servos, ipsa libera liberos et Dei filios faceret et suos, qui sibi diligenter servirent et tamquam bonae matri devoti filii obedirent.'

[5] Huber, p. 5, who is more moderate here than Janus. Neander and other Protestant writers have fully acknowledged the purity of Gregory's intentions.

[6] Was the feudal system a kind of 'Noli me tangere,' that must not be 'disturbed' even in a case of necessity, as a defence against peril, as

even Pichler allows that Gregory's was? Pichler, Gesch. der Kirchl. Trennung, i. p. 223.

[7] This is Janus all over, p. 124.

[8] Huber, p. 8.

Part I. Gregory's Conflict with Henry IV.

§ 1. Gregory's admonitions. § 2. The proceedings of Henry. The Synod of Worms. § 3. Excommunication and release from the oath of allegiance. § 4. Henry IV. at Canossa. § 5. The Pope unconnected with the election of the opposition king. § 6. Recognition of Rudolph. The Antipope Clement III. § 7. Occupation of Rome and coronation of the Emperor. § 8. Gregory's fundamental principles. § 9. Justification of his proceedings against Henry. § 10. With reference to the dispensation of the oath of allegiance. § 11. His principles not novel. § 12. St. Peter Damiani. § 13. No unfairness in Gregory.

§ 1.

In the year 1072, Pope Alexander II. had remonstrated with the King of Germany, Henry IV., concerning whose excesses and crimes his most trustworthy contemporaries speak unanimously,[1] and in the spring of 1073 he excommunicated Henry's counsellors, who were addicted to the practice of simony, and summoned the king to give account in Rome.[2] The Saxons had already declared that a king rendered more famous by his crimes than by his name should not be left on the throne, especially as he had not received the imperial crown.[3] Gregory's intentions with regard to Henry were in the beginning anything but hostile. The king was young, and seemed still capable of amendment. Gregory applied to him to confirm his election;[4] he tried every means of reclaiming him,[5] and regarded him as 'future emperor.'[6] The Empress-mother Agnes coöperated in endeavouring to arrange an understanding between them.[7] Henry IV. wrote, towards the end of August or beginning of September 1073, to Gregory 'words full of sweetness and obedience, such as neither he nor his predecessors had ever before addressed to the Church of Rome:' he called him father, recognised the necessity for interchanging support between the two powers, testified repentance for his misdeeds, promised amendment and obedience, and besought counsel and assistance.[8] Gregory en-

praised the Empress Agnes for her efforts after peace;[10] his two letters of the 7th December 1074[11] also bear witness to a thoroughly friendly relation. Henry had given a favourable reception to the Papal legate, and had promised his coöperation for the extirpation of simony and the abolition of clerical marriage. On the 20th July 1075 the Pope wrote to the king with regard to the appointment to the see of Bamberg, and still hoped from him the fulfilment of his promises.[12]

[1] Lambert von Hersfeld says of him: 'In omnia genera flagitiorum, ruptis omnibus modestiae et temperantiae frenis, praecipitem se dedit.' Further witnesses are Berthold († 1088), Bernold († 1100), Paul of Bernried, Bruno 'de bello Saxonico,' Donizo, Bonizo, Marianus Scotus, Hugo of Flavigny. Anselm of Canterbury regarded Henry IV. as a successor of Nero and Julian ('de azymo et ferment,' Praef. Opp. p. 135). Cf. also Vita S. Anselmi Ep. Lucens. (Pertz, Scr. t. xii.). The witnesses in Henry's favour are of far less consideration; Benzo's Panegyrikus is called by Schlosser a lampoon. Upon the witnesses, cf. Natal. Alex. Hist. Eccl. saec. 11. et 12, dissert. 2, a. 1, t. xiii. p. 523 seq. ed Bing. 1788; Bianchi, Della potestà e della polizia della Chiesa, Rome, 1745, iv. t. i. l. ii. § 1, n. 2, p. 195 seq.

[2] Bonizo, Lib. ad Amc. p. 810. Ekkehardi, Chron. Univ. a. 1073. Pertz, vi. 200. Jaffé, n. 3470, 3530, pp. 397, 401.

[3] Cf. Bossuet, Defens. Declar. Cleri. Gall. P. i. l. iv. c. ix. p. 352, ed. Mogunt, 1788.

[4] Cf. Hefele, Conc. v. p. 3 seq.

[5] Reg. Greg. VII. l. i. Ep. 9, ad Gothofr. Duc.; Ep. 11, ad Beatr.; Ep. 19, ad Rodulf. Duc.; Ep. 24, ad Brun. Veron.; Ep. 26, ad Herlemb. Mediol. (Migne, PP. Lat. t. cxlviii. pp. 291 seq. 308, 310. Jaffé, p. 406 seq.).

[6] L. i. Ep. 20, ad Rainald. Cum. Ep. p. 303. Cf. P. ii. Ep. 26, p. 671.

[7] L. i. Ep. 21, ad Anselm.; Ep. 85, ad Agnet. Imper.

[8] Post Greg. l. i. Ep. 29, p. 312, ed. Migne.

[9] L. i. Ep. 39, p. 320 seq. d.d. 20. Dec. 1073.

[10] L. i. Ep. 85, p. 317.

[11] L. ii. Ep. 30, 31, p. 384 seq. Jaffé, n. 3664 seq. p. 415.

[12] L. iii. Ep. 3, p. 430. J. n. 3720, p. 419.

§ 2.

But soon after (11th September 1075) Gregory had to complain of Henry's inconsistency, and earnestly recommend to him the affairs of the diocese of Bamberg, as a reminder of his admonitions.[1] However, Henry's proceedings with regard to the bishoprics became every day more arbitrary and disgraceful;

deavoured to reconcile the Saxon nobles with the king,[9] and his severity towards the Saxons increased, and the insolence with which his victory over them inspired him caused him to disregard all his former promises. At last Gregory (1075) bitterly complained that he had returned to his friendship for the excommunicated counsellors, and had disowned by his deeds the submission which in letters he had promised to the Church of Rome; he declared at the same time[2] that he was willing to modify, as far as his conscience allowed, the decrees of the last Synod, which had prohibited the much misused lay-investiture.[3] Gregory declared that he wished to be at peace with the king, if the king would keep peace with God, and repair whatever evil he had done, to the injury of the Church and the peril of his own salvation.[4] The Papal plenipotentiaries were ill-treated at Goslar, at Christmas 1075. Henry, without fear or shame, remained in the company of the excommunicated lords, and would have no reconciliation: he compelled the legates to proceed to the extremity of summoning him to the Synod to be held in Rome in the ensuing Lent, to answer the charges of the crimes imputed to him, and of threatening him with excommunication in case of non-appearance. Up to this point Bossuet discovers nothing in the Pope's conduct inconsistent with the legitimate sphere of his authority.[5] Hereupon Henry convened, in January 1076, his Synod of Worms, at which the court bishops declared, upon vain pretexts and with much abuse, that the Pope, whom they had acknowledged till then, was deposed.[6] Thus the unhappy conflict which produced so much injury to the empire began with a crime that threatened to plunge the whole Church into the direst confusion.

[1] L. iii. Ep. 5, 7, pp. 433, 435.
[2] L. iii. Ep. 10, p. 439. Jaffé, p. 420.
[3] *Cf.* Hefele, Conc. v. 34-42.
[4] L. iii. Ep. 15, ad Wifred. Mediol. p. 446.
[5] Bossuet, l.c. P. i. l. ii. c. xxx. p. 241.
[6] Bernoldi, Chron. (Pertz, vii. 432). Lambert, Ann. a. 1076, p. 241 seq. Paul. Bernried, Vita Greg. c. vi. n. 49 seq. Migne, l.c. p. 63 seq. Pertz, Leg. ii. p. 44.

§ 3.

At the Synod held the following month Gregory received the sentence of deposition which Henry had the audacity to send him; whereupon, with the consent of 100 bishops,[1] he excommunicated Henry, and released his subjects from their oath of allegiance, at the same time forbidding the king to exercise his right of government.[2] This was neither a deposition nor a deprivation; it was merely a suspension, and was, according to the usage of the time, a necessary consequence of the excommunication; for none of the faithful could hold intercourse with an excommunicated person, and no one being excommunicated was capable of governing as long as he remained under the ban. It was not an irrevocable sentence, but a measure to endure until the required satisfaction was performed;[3] if, however, the obstinacy continued for a year, the sentence was definitive. The assembly of princes at Tribur and Henry's advocate with the Pope admitted that he would lose his kingdom if he remained under the ban for a year and a day.[4] It was Gregory's object to move the king to repent, and perform satisfaction;[5] he reminded the German princes, after the sentence, that he had pronounced it not from earthly motives, but in accordance with his duty; and if Henry returned to God they might receive him in a friendly spirit, and let mercy, not justice, prevail.[6] He only desired that Henry should dismiss his bad counsellors, take worthy men in their place, repair the evil that had been done, seriously amend his life, and no longer treat the Church like a slave. Henry's partisans stoutly denied the legality of the excommunication;[7] for they felt what the others expressed,[8] that a prince who no longer belonged to the Church could not conduct the government of a Christian people. Gregory laid most stress upon the excommunication,[9] considering the rest of the sentence merely the consequence of this. He reserved it to himself to absolve from excommunication: otherwise timid, timeserving, or unfaithful bishops might have absolved the king, without requiring due satisfaction.[10]

[1] 'Cunctis qui convenerant, episcopis id fieri decernentibus,' says Lambert. The biography of Anselm of Lucca (c. iii.) has: 'Omnis illo-

synodus jure indignata anathema illi conclamat. 'Omnibus acclamantibus definitum est,' says Paul Bernried, c. vii. n. 62, p. 74.

[2] 'Totius regni Teutonicorum et Italiae gubernacula contradico.' Mansi, xx. 467.

[3] Natal. Alex. H. E. saec. 11. diss. 2, art. 4. Bianchi, t. i. l. i. § 2, n. 9-11, pp. 200-202. Döllinger, Lehrb. d. Kirchengeschichte, ii. P. 218. Phillips, K.R. iii. § 125, p. 158 seq. Hefele, v. 83. Gosselin, ii. c. ii. a. 1, p. 120 seq.

[4] Lambert, a. 1076: 'Quod si ante diem anniversarium excommunicationis suae, suo praesertim vitio, excommunicatione non absolvatur, absque retractatione in perpetuum causa ceciderit, nec *legibus* deinceps regnum repetere possit, quod *legibus* ultra administrare, annuam passus excommunicationem, non possit.' Paul Bernr. c. lxxxv: 'Quia *juxta legem Teutonicorum* se praediis et beneficiis privandos esse non dubitabant, si sub excommunicatione integrum annum permanerent.'

[5] Reg. l. iv. Ep. 3, ad univ. fidel. p. 451.

[6] Reg. l. iv. Ep. 3, ad German. p. 457.

[7] In Gregory's letter to Hermann of Metz, l. iv. Ep. 2, p. 454, he treats of the objection: 'Regem non oportet excommunicari.' In the letter Audivimus (Ep. P. ii. n. 26, p. 671; Mansi, xx. 377) he answers the question: 'Utrum (Henr.) juste sit excommunicatus.' Bernold of Constance, Apolog. super Excom. Greg. VII. (Migne, l.c. p. 1067 seq.), contests the point with those who took no heed of the excommunication, and, Op. de Vitanda Excom. Communione (ib. p. 1181 seq.), those who considered intercourse with excommunicated persons allowable.

[8] Stephen of Halberstadt wrote thus to Walram (Migne, l.c. p. 1446): 'Pro quibus nefandis malis ab apostolica Sede excommunicatus (Henr.) *nec regnum nec potestatem aliquam super nos, qui Catholici sumus, poterit obtinere.*'

[9] L. iv. Ep. 2, p. 454, Henry is called: 'excommunicatus rex, si fas est dici rex;' it is said of him: 'excommunicationem incurrere non timuit;' Ep. 3, ad Germ. p. 456: 'judicio Spiritus Sancti excommunicatis,' then 'anathematis vinculo alligatus et a regia dignitate depositus.' Cf. Ep. 6, ad Leod. Ep. p. 460; Ep. 8, ad Episc. Tusc. p. 462; Ep. 22, ad Hugon. Ep. Diens. p. 476. Also P. ii. Ep. 25, p. 670 (Mansi, xx. 375), ad Henric. Ep. Trid.: 'Promittimus, festum B. Petri non prius transeundum, quam in cunctorum notitia certissime clareat, illum justissime esse excommunicatum.'

[10] L. iv. Ep. 2, p. 455; Ep. 3, p. 457.

§ 4.

Henry wished to take vengeance on the Pope; but he soon saw himself abandoned, deprived of all consideration, and humiliated before the assembly of princes at Tribur. To escape the loss of his throne, he submitted to the prescribed conditions. The princes, weary of his misgovernment, agreed that his case should be decided at a diet to be held at Augsburg on the 2d

February 1077. The Pope was invited to join this diet, which was to be held under his direction. On his journey towards Germany Gregory learned that Henry had entered Italy.[1] It was his intention to forestall the Pope, and procure absolution before the dreaded meeting at Augsburg.[2] His appearance before Canossa somewhat perplexed the Pope; for Henry, by taking this journey, had broken the condition imposed on him, of awaiting the Pope at Augsburg; and Gregory neither wished nor dared to pass judgment upon an accused person at a distance from his accusers. The penance which Henry performed at Canossa was in no way imposed upon him by the Pope, but was freely undertaken by Henry, as a proof of his amended dispositions;[3] it was of a character not uncommon in those days, and was not considered degrading. As Henry declared himself ready to make all necessary promises, besides freely undertaking this penance, Gregory could not spurn him in his seeming penitence, and he granted him absolution, with reservations, however, in case of relapse. The Pope communicated these proceedings to the German princes, who must have felt some degree of displeasure with him; and he also acquainted them with the conditions which Henry had accepted,[4] one of those most insisted upon being that Henry should appear before a diet to answer the charges brought against him by the princes. The Pope had no choice in this: he might pardon Henry's offences against himself and against the Church, but he could not compel the princes to return to their obedience to Henry.[5] They had already meditated electing another king, A.D. 1076.[6]

[1] Hefele, l.c. p. 77 seq.

[2] Lambert: 'Rex certo sciens omnem suam in eo verti salutem, si ante anniversarium diem excommunicationis absolveretur .... optimum factu judicavit, ut Romano Pontifici in Italiam occurreret.'

[3] On these and other questions see Floto, Henry IV. vol. ii. p. 129 seq.; and Hefele, p. 84 seq.

[4] L. iv. Ep. 12, ad German. pp. 465 467.

[5] Hefele, p. 87.

[6] L. iv. Ep. 7, p. 461, ad Henr. Ard. et Med.

§ 5.

In spite of all this, on the 28th January 1377 the fickle king broke the covenant he had made at Canossa, and entered into a close alliance with the evil-doing bishops of Lombardy. He barred the passes into Germany, thus preventing the Pope from attending the proposed meeting. Contrary to Gregory's wish,[1] the German princes elected, in March 1077, Duke Rudolph of Swabia to be their king; but although Rudolph had been all submission whilst Henry was violating treaties and detaining a Papal legate in prison, the Pope did not at once declare himself against Henry and in favour of Rudolph; neither did he wish to excommunicate the new king before giving him and his electors a hearing. He still hoped, in council with the German princes, to arrive at a settlement of the dispute, and thus avert the great evils impending.[2] Rudolph thought otherwise, and sought to end the matter by the sword, A.D. 1078. This civil war can no more be laid to Gregory's charge than the one before it, which was occasioned by Henry's oppression of the Saxons. He had no part in Rudolph's election, and the flame was kindled by Henry's faithless violation of treaties.[3] Nay, Gregory was bitterly reproached by Rudolph's followers for not declaring himself positively against Henry, and for still clinging to the hope of his conversion.[4]

[1] Cf. l. ix. Ep. 28, Notum facimus, p. 629.

[2] L. iv. Ep. 23, 24, p. 478 seq.; l. v. Ep. 7, 15, 16, p. 492 seq. 500 seq.; l. vi. Ep. 1, 4, p. 509, 514. The reproach of inconsistency which has been made against the Pope (Defensio Declar. P. i. l. i. § 1, c. ix. pp. 102, 103) is refuted if the deeds and proceedings are correctly set forth.

[3] Hefele, p. 99.

[4] Bruno (Pertz, vii. 372 seq.). Mansi, xx. 386. Migne, l.c. p. 745 seq.

§ 6.

Envoys were despatched by both kings to the Synods held in Rome in 1078 and 1079, but they needed more instructions and fuller powers than they had received; the Papal legates in Germany were endeavouring to keep peace between the parties. On the 1st of October 1079, Gregory declared to the followers

of Rudolph that it was the more unjustifiable of them to accuse him of an inconsiderate policy, since no one had more than he to suffer from Henry; that he had sided with neither; that if his legates had acted contrary to their instructions he deeply regretted it, but could not on that account depart from the path of justice.[1] Not till the 7th March 1080 did he renew the ecclesiastical sentence upon Henry, who had been guilty of fresh crimes, and at the same time he acknowledged Rudolph as king.[2] Henry's followers then declared the Pope deposed, and on the 25th June elected as antipope,[3] under the name of Clement III., the simoniacal Archbishop Guibert of Ravenna, who had been often excommunicated. After Rudolph's death, on the 15th October 1080, Henry proceeded to Italy to install the antipope. Gregory's distress was at this moment extreme; his only hope of earthly assistance was from Robert Guiscard, who had not shown himself hitherto to be very trustworthy. 'Truly astonishing,' writes Hefele, 'is the courage with which Gregory, whilst engaged in a struggle for his own existence, keeps his attention upon the needs of the Church in all parts of the world, not losing sight of the necessities even of private individuals and convents; and equally astonishing is the unruffled calm and firmness which he maintained in the midst of the greatest perils, without deviating one finger's breadth from his principles. His own dire need never prevented him for an instant from entering into everything with apostolic dignity and power, encountering even the great and mighty ones of the earth with admonitions and chastisements, when sacred things or the duty attached to his office appeared to require it.'[4]

[1] L. vii. Ep. 3, p. 547. J. n. 3867, p. 432 seq.
[2] Mansi, xx. 531-534.
[3] Eccch. Chron. h.a. Pertz, Scr. vi. 203. Decret. Brixin. ib. Leg. ii. p. 51.
[4] Hefele, p. 146.

§ 7.

In 1081, Gregory wrote to Bishop Altmann of Passau and Abbot William of Hirsau,[1] that for himself he did not fear Henry's passage of the Alps, but that he desired to secure Ger-

man support for the loyal Countess Mathilda; he counselled the Germans not to be in too great haste to elect a king, lest they should make an unsuitable choice; the one upon whom their election fell should take an oath of affording the necessary security to the Church. He charged the legate Altmann to receive in a friendly spirit any of Henry's partisans who might return to him. When Henry had advanced as far as Ravenna, Gregory declared that he would rather sacrifice his life than forsake the path of justice. If he had so willed, he might have obtained great concessions from the king.[2] In May, Henry reached Rome; but the town closed its gates at his approach. He caused the antipope to be crowned in a tent, and after devastating the surrounding country returned to Lombardy. In Germany, Count Hermann of Luxemburg was crowned as opposition king on the 26th December 1081, but he wanted the power and foresight to take advantage of the weakness which at that time existed amongst the partisans of Henry. The Pope remained firm when Henry, for the second time, and again a third time, advanced against Rome.[3] On the 3d June 1083, Henry seized the Leonine city with the church of St. Peter, and then asked Gregory to crown him, saying he would abandon the antipope. Gregory, however, maintained that he must first of all perform satisfaction, and thus obtain absolution.[4] At Easter in 1084, Henry was crowned emperor in St. Peter's by the antipope, but was obliged to retreat before the advancing force of Duke Robert, who came to the assistance of the Pope, besieged in the castle of St. Angelo. Gregory then left Rome, and died at Salerno on the 25th of May 1085.[5]

[1] L. ix. Ep. 3, p. 667 seq.; Ep. 10, p. 674 seq. J. pp. 437, 438.
[2] L. ix. Ep. 11, p. 615, ad Desid. Abbat. J. n. 3933, p. 438.
[3] Hefele, pp. 150, 151 seq.
[4] Bonizo ap. Oefele, Rer. boic. Scr. ii. 818.
[5] Hefele, p. 156 seq.

§ 8.

Gregory frequently expressed his guiding principles in his letters and encyclicals. In one of the latter he says: 'By this we believe that the love of God is infused into our hearts, that we

wish for one thing, long for one thing, and strive for one end. Our one wish is that the wicked may be enlightened and may return to their Creator. Our one longing is to see Holy Church, now trodden under foot, in confusion, and divided into various parties, restored to her ancient beauty and strength. Our one endeavour and end is that God may reign in us, and that we, with our brethren and those who persecute us, may become worthy to enter into eternal life.'[1] In another place he says: 'The princes of the people and the princes of the priests come out with great multitudes against Christ the Son of the Almighty God, and against His Apostle Peter, to destroy the Christian religion and spread the perversion of heresy. But, by the grace of God, neither threats, nor persuasion, nor promises of earthly honour will avail to withdraw from Him to their impiety those who trust in the Lord. They have entered into a league against us, because we cannot be silent when the Church is in danger, and because we resist those who take no shame in reducing the Bride of Christ to slavery. A woman, how poor soever, may lawfully take a husband according to the laws of her country and her own wish; but the will of wicked men and their horrid devices would prevent Holy Church, who is the Bride of God and our Mother, from adhering lawfully, according to God's laws and her own desire, to her Bridegroom upon earth. We cannot suffer that heretics, adulterers, and usurpers should stand in the place of fathers to the sons of the Church, and should brand them with the dishonour of adultery.'[2] Gregory was well aware how many enemies he made by his zeal for justice;[3] he felt the whole weight of the burden that was laid upon him;[4] he found so little support, because almost every one 'sought their own things, not the things that are Christ's.'[5] 'We may not,' he writes,[6] 'disregard the law of God from respect to any one, nor leave the straight path for man's favour; as the Apostle says, "If I yet pleased men, I should not be the servant of Christ"' (Gal. i. 10). In his decrees against the incontinence of the clergy, against simony, and against lay-investiture,[7] which at that time wrought so much mischief in the Church, he kept to the earlier Church legislation and the decrees of his predecessors down to Nicholas

II. and Alexander II., and could truly say: 'Whilst we observe or defend the statutes of the holy Fathers, we bring forward in our judgments upon ecclesiastical affairs nothing new or imagined by ourselves, but we follow and perform what they have pronounced by the Holy Ghost.'[8] Gregory's decrees are supported by a succession of previous canons,[9] and he only increased the severity of some of them to suit the exigences of the time. With all his burning zeal for the purification of the clergy, and in the midst of his great struggle with faithless bishops, perfidious nobles, and evil of all kinds, he showed a tender sympathy for all the woes of Christendom, even for Greeks and Orientals.[10]

[1] L. ix. Ep. 21, ad univ. fideles, p. 622.

[2] P. ii. Ep. 64, p. 708. Mansi, xx. 628.

[3] L. ix. Ep. 2, p. 604.

[4] L. vii. Ep. 8, ad Monach. Cluniac. p. 552: 'Nos quoque tanti culminis onus quod ultra vires est, sustinentes, ejusmodi solatio sublato, cum neminem aut vix paucos suffragatores similes inveniamus, quanto mentis angore teneamur liquido quidem potestis et ipsi perpendere.'

[5] L. i. Ep. 9, ad Gottofr. Duc.; Ep. 42, ad Sicard. Apul. p. 322; l. ii. Ep. 49, ad Hug. Abb. p. 460; Ep. 77, ad Gebh. Salisburg. p. 428; P. ii. Ep. 1, ad Lanfranc, p. 643 (Mansi, xx. 274).

[6] L. i. Ep. 9, ad Gottofr. p. 291.

[7] Upon investiture, cf. Cardinal Vincent Petra, Comment in Constit. Apostol. Bull. Venet. 1741, f. t. i.; Const. Callisti II. § 1, p. 235 seq.; and Card. Humbert, advers. Simon. (Martene, Thes. nov. Anecd. t. v.). This kind of investiture some held to be schismatical, some to be heretical (Ivo Carnot, Ep. 235, 238; Joh. Ludgun. Ep. ad Ivon. ap. Labbé, xii. 1190). Gottfried of Vendôme distinguishes a double investiture: 'Alia est investitura, quae episcopum *perficit*, alia vero quae episcopum *pascit*. Illa *ex divino jure* habetur, ista *ex jure humano*.' (Opusc. vi.; Migne, clvii. p. 219).

[8] L. iv. Ep. 6, ad Henric. Ep. Leod. p. 460.

[9] Gregory (l. iv. Ep. 22, ad Hugon. Diens.) quotes the can. 22, Conc. viii. oecum. (869). Bernold in his Apology points out the earlier authorities (Migne, l.c. p. 753 seq.). Vide also Hefele, Conc. iv. pp. 759, 791; v. 21, 40 seq. In the ninth century, Florus (de Elect. Episc. c. iv. Migne, cxix. p. 13) wrote: 'S. ordinatio nequaquam regis potentatu, sed solo Dei nutu et Ecclesiae fidelium consensu cuique conferri potest. Quoniam episcopatus non est munus humanum, sed S. Spiritus donum.'

[10] L. i. Ep. 49, p. 329; l. ii. Ep. 37, p. 390; l. viii. Ep. 1, p. 571 seq.

§ 9.

Gregory VII. did not fail to explain and justify his conduct in reference to Henry IV. He did this especially in two letters

to Bishop Hermann of Metz (in 1076 and 1081). This prelate was not amongst those who 'inquired of the Pope by what right he could depose the king and release his subjects from their oath of allegiance.' He merely begged to know what answer was to be given to those who asserted that kings could not be excommunicated, and that the oath of allegiance could never be dispensed. In his first letter[1] Gregory dwells upon the subject of Henry's first excommunication, touching also upon its results; the second letter treats of the excommunication and the release from the oath of allegiance.[2] Concerning the excommunication Gregory appeals (1) to the supreme power conferred upon St. Peter and his successors, which extends over all the faithful without exception: 'Whosoever denies the power of the Church to bind him denies her power to loose him, and in denying this separates himself from Christ.'[3] After quoting 1 Cor. vi. 3,[4] Gregory says: 'If the Holy See, by the power granted her by God, judges spiritual things, why not temporal things also?' but the context shows that he is speaking of lay people, in so far as they are or should be members of Christ.[5] He will not have it said that kings are beyond the jurisdiction of the Church, nor that the civil power is above the spiritual, for they are different in their origin and aim, and Pope Gelasius inculcated obedience to the Holy See on the Emperor Anastasius.[6] (2) Pope Julius says that the Roman Church can open and close the gates of heaven to whom she will. These and similar expressions were in use long before the time of Gregory VII.[7] (3) Gregory appeals also to a passage in a letter from Clement to James, translated from the Greek by Rufinus, which was very ancient and much used;[8] (4) to the conduct of St. Ambrose towards Theodosius the Great;[9] and (5) to the measures of Pope Innocent I. against the Emperor Arcadius concerning St. John Chrysostom.[10] Besides these examples he refers to the penal authority of the Apostles (2 Cor. x. 6; 1 Cor. v. 3-11). Although apocryphal as well as genuine documents are here quoted, all were in use long before the time of Gregory VII., and their genuineness had then never been disputed. The incorrectness of the documents and examples he selected need not at all affect the justice of his

judgment.[11] This must be decided by the facts of history and the laws then in force.

[1] L. iv. Ep. 2, p. 454.

[2] L. viii. Ep. 21, p. 594: 'Quod .... postulasti te quasi nostris scriptis juvari ac praemuniri contra illorum insaniam, qui nefando ore garriunt, auctoritatem S. et Ap. Sedis non potuisse regem Henricum, hominem Christianae legis contemptorem, ecclesiarum videl. et imperii destructorem atque haereticorum auctorem et consentaneum, excommunicare nec quemquam a sacramento fidelitatis ejus absolvere.'

[3] L. iv. Ep. 2, pp. 454, 455; l. viii. Ep. 21, pp. 594, 595.

[4] 'Know you not that we shall judge angels? How much more things of this world' (1 Cor. vi. 3). This passage, in which St. Paul admonishes the faithful not to bring their causes before heathen judges, but to suffer their disputes to be decided by the 'saints' in the Church, was adduced even in patristic times in favour of ecclesiastical jurisdiction. Cf. Thomassin, de Vet. et Nova Eccl. Disciplina, P. ii. l. iii. c. ci. cii. J. a. Bennettis, Vindiciae Privileg. S. Petri, t. vi. pp. 509-516.

[5] These words (l. iv. Ep. 2, p. 455) follow immediately: '*Reges* quidem et *principes hujus saeculi* qui honorem suum et lucra temporalia justitiae Dei praeponunt ejusque honorem negligendo proprium quaerunt, cujus sint membra cuive adhaereant, vestra non ignorat charitas..... Si ergo *spirituales viri* cum oportet judicantur, cur non *saeculares* amplius de suis pravis actibus constringunt?' The following passage (l. viii. Ep. 21) is to be interpreted in the same way: 'Habet enim (Eccl. Rom.) potestatem singulari privilegio concessam aperire et claudere januas regni coelestis quibus voluerit. Cui ergo aperiendi claudendique coeli data potestas est, *de terra* judicare non licet? Absit. Num retinetis quod ait beatissimus Paulus Ap.: Nescitis quia *angelos* judicabimus? Quanto magis saecularia?' Cf. l. iv. Ep. 24, p. 480; Paul Bernried, n. 86, p. 85. Bernold (Apologet. Rat. c. ix. and de Solut. Juram. c. iv. Migne, l.c. pp. 1223, 1253) understands by 'saecularia' the saeculares principes utpote membra Ecclesiae. Here as elsewhere he expresses Gregory's idea with great exactness.

[6] L. viii. Ep. 21, p. 595, where, in treating of the respect of the Fathers for the Roman Church, he uses what are in fact the words of St. Gelasius: 'Etsi cunctis generaliter sacerdotibus,' &c. (Gelas. Ep. 8, ad Anast.; Mansi, viii. 30 seq.; Jaffé, n. 387); but in l. iv. Ep. 2, this was left out, probably through the omission of the rough draughtsman, or even earlier of the clerk to whom it was dictated; and Pseudo-Ambrose was therefore mentioned (Ambrosius in suo Pastorali, as c. x. d. 96, § ult. Honor.). The falsification asserted by Janus, p. 115, is by no means proved. Bernold, de Solut. Jur. c. iv. (l.c. p. 1253), gives the text in Gratian up to § 1 more accurately. In l. viii. Ep. 21, pp. 597, 598, the passage from Pseudo-Ambrose follows in another order.

[7] In Anti-Janus, p. 137, No. 81, I quoted the words of Pope Boniface I. which are quite analogous to the passage of Julius in Pseudo-Isidore, Ep. c. xi. p. 464, ed. Hirsch, which, according to Janus, p. 116, was one of the pillars of the foundation 'on which Gregory VII. built his notions of dominion.' The letter of Pope Julius here in question was quoted in France

in the ninth century (Hincmar, Laudun. Ep. ad Hincmar; Rem. Opp. Hincm. ii. 613, ed. Sirm.; Hincmar, Op. ad Laudun. c. xx.). St. Bernard agrees, Ep. 42, 'Si quis tentat excipere, conatur decipere,' that no one can be excepted from the words of St. Matt. xiv. 18, 19.

[8] We find the words in Greg. VII. l. viii. Ep. 21, p. 596. They are briefly mentioned, l. ii. Ep. 2. See Ep. ad Jacob. c. xviii. (Migne, PP. gr. ii. p. 54), used by the Council of Metz, 888, c. 12, and John VIII. Ep. 234. The letter was especially used in old times. Cf. note in Ep. cit. Cotel. PP. Apost. i. 484.

[9] L. viii. Ep. 21, p. 597; l. iv. Ep. 2, p. 454. The fact is treated of by Soz, H. E. vii. 25; Theod. H. E. v. 17; the Hist. Tripart; and also the later Greek chroniclers, *e.g.* George Hamart, Chron. pp. 476, 477, ed. Petrop.

[10] Baron, a. 407, n. 22, 23, ex Glyca (Ann. pp. 480, 482). Nicephoro Call. (H. E. xiii. 34). Gennad. (Georg. Alex. in Vita Chyrs. Cf. Phot. Bibl. cod. 96): Pallad. Vita Chrys. c. xxiv. xxviii. xxxi. Jaffé, Reg. p. 932 (the genuine letters, ib. pp. 23, 24).

[11] Bianchi, t. i. l. ii. § 11, n. 2, p. 290.

§ 10.

Concerning the release from the oath of allegiance and the deposition of sovereigns, Gregory appeals, in his own justification, (1) to the action of Pope Zacharias against Chilperic in favour of Pipin.[1] This example was very telling; because the Frankish annalists[2] throughout favour his view, and show that however these facts might be explained,[3] at least he was not the first to ascribe Pipin's elevation to the authority of the Pope. He appeals (2) to the privileges granted by Gregory the Great to a xenodochium (hospital), a convent, and the church of St. Martin in Autun, to which was appended the decree that any one injuring these institutions, whether he were king, priest, or judge, should forfeit his authority. The defenders of *Janus* (p. 6) briefly dispose of these privileges by calling them spurious. They disregard the fact that the only reason *Janus* alleges for this (p. 114, No. 53), viz. Launoi's assertion on the subject, has been long since refuted,[4] like the remarks of Blondell elsewhere appealed to.[5] The authenticity[6] of these privileges is vouched for by the most ancient and best manuscripts, and has been placed beyond dispute by learned French critics.[7] They were granted at the request of Queen Brunhilda, and all was arranged according to her wish. We find analogous formulas in the Councils, for instance, in the fifth of Orleans, A.D

549, concerning a hospital founded by King Childebert in Lyons.[8] Hence most Gallican theologians have made objection to these 'privileges' on other grounds, *i.e.* that the clause is to be taken in a distributive sense, not cumulative; and that for ecclesiastics deposition is to be understood, and for laics excommunication;[9] or they would make it out to be rather a curse than a judicial sentence;[10] they never ventured to assert them to be entire forgeries. According to the views universal in his age it was perfectly open to Gregory to appeal, as he frequently did, to divine and human laws.[11] He was forced to inflict the ban until amendment had begun, and he could declare that the penalties attached thereto by public law had been incurred. It was the opinion of his contemporaries that, under certain conditions, the oath of allegiance ceased to bind, and that it could be dispensed by the Pope,[12] who could also depose sovereigns in certain circumstances.[13] With regard to the withdrawal of obedience from an excommunicated prince, it would have been easy for Gregory to appeal to the proceedings of Gregory II. against the iconoclastic Emperor Leo II., as related with much admiration by the Greek chroniclers. The Pope in this case freed Italy from its obedience to an heretical emperor, forbad that tribute should be paid him, and joined in alliance with the Franks.[14] Even if the Greek accounts of the affair are open to the charge of inaccuracy,[15] they must in the eleventh century have satisfied all the requirements of an authentic historical document, and testify at least the conviction of their authors, who speak throughout in praise of the proceedings they describe.

[1] Vide for details: Bianchi, l.c. n. 9 seq. pp. 304-327; Charlas, de Libert. Gallic. l. vii. c. x. p. 39 seq. t. ii. ed. 1720; Bennettis, Privil. S. Petri, P. ii. t. vi. p. 384 seq.; Mamachi, Orig. et Ant. t. iv. 224-239. Also Gosselin, t. i. sect. 2, c. ii. a. 2. Doc. No. vii.

[2] We find there: '*Secundum Romani Pontificis sanctionem* rex Francorum appellatus est ad hujus dignitatem honoris unctus sacra unctione' (Pipinus sc.; Annal. Laureshenses). 'Zacharias *Papa mandavit*, ut melius esset illum regem vocari, qui potestatem haberet. . . . . *Per auctoritatem ergo apostolicam* jussit Pipinum regem fieri' (Ann. Loissel). 'Zacharias P. *ex auctoritate S. Petri Apostoli mandat* populo Francorum, ut Pipinus, qui potestate regia utebatur, nominis quoque dignitate frueretur' (Annal.

Franc. a Pithoeo ed.). '*Per auctoritatem et imperium* s. rec. D. Zachariae P. et unctionem s. chrismatis in regni solio sublimatus' (Auct. an. ap. Mabill. de re Diplom. l. v. tab. 22, p. 384, ed. 1709). Cf. note in Alex. Natal. H. E. saec. 8, diss. 2, t. xi. pp. 192, 193.

[3] Many more modern defenders of the civil power have said that Zacharias did not depose Chilperic, but merely acquiesced in the deposition voted by the nobles of the kingdom. Glossa ad c. 3, c. xv. q. 6. Auctor. quaest. in utramque partem disput. (erroneously styled Aegid. Rom.), a. 4 (Goldast. Monarch. ii. 106, ed. Francof.). Somn. Viridar. c. lxxiii. (ib. i. 83). Lupold, de Bebenb. c. xii. p. 388, ed. Schard. de Jurisd. Some think that the fact is not sufficient to prove the 'jus' (Joh. de Paris, de Pot. Reg. et Pap. c. xv. xvi.; Natal. Alex. H. E. saec. 13 et 14, dissert. 9, a. 2, n. 8, p. 823 seq.).

[4] Vide Anti-Janus, p. 110, No. 72.

[5] Friedberg, de finium inter Eccles. et Civitatem regundorum judicio, Lips. 1861, p. 26, note 1.

[6] Editor. Maurin. in Greg. M. l. xiii. Ep. 8, 9, 10, t. ii. p. 1221 seq. Mansi, x. p. 348 seq. Jaffé, Reg. n. 1492-1494, p. 149 seq., quotes these documents without hesitation.

[7] Such as Simond, Duchesne, Cellier (Hist. des Auteurs, t. xvii. p. 317), Gosselin (op. cit. t. ii. c. ii. a. 2).

[8] C. 15 (Hefele, Conc. iii. p. 4). A 'privilegium' of Pope John VIII. (872-882) pro conventu Pultariensi, held to be genuine by Innocent III. and inserted word for word by him, 1206, in his Constitution, l. ix. Ep. 44 (Migne, ccxv. pp. 851-854), contains quite a similar formula; it is in strict accordance with the time, and offers no insoluble difficulties. Vide also a diploma of Leo IV. renewed in 1207 (ib. l. x. Ep. 142, p. 1241 seq.).

[9] Defens. Declar. Cleri Gall. P. i. l. ii. c. ix. p. 208 seq.

[10] Natal. Alex. &c. Cf. Thomassin, de Vet. et Nov. Eccl. Discipl. P. i. l. iii. c. xxx. n. 3. Against these objections, cf. Bianchi, t. i. l. ii. § 11, n. 6 seq. pp. 296-303.

[11] P. ii. Ep. 26, ad Germ. p. 672: 'Propter quae (horrenda scelera) non solum excommunicari usque ad dignam satisfactionem, sed etiam ab omni honore regni eum absque omni spe recuperationis debere destitui, *divinarum et humanarum legum* testatur et jubet *auctoritas*.'

[12] Bernold, Apolog. Rat. c. xiv. p. 1226 seq. Paul Bernried, pp. 85, 86. Gebhard. Salisb. Ep. ad Herm. Metens. ib. p. 859 seq.

[13] Bernold, de Solut. Juram. c. iv. p. 1253, ed. Migne.

[14] Georg. Harmartol. Chron. l. iv. c. ccxlviii. n. 17, p. 636, ed. Muralt. Theophanes, a.m. 6221, p. 343 (Migne, PP. gr. t. cviii. p. 825; ibid. p. 1364, the Latin translation of Anastasius). Zonar. Cedren. Glycas. &c. in Bianchi, l.c. § 16, n. 1 seq. p. 379 seq. The chronology of the two Pagi is certainly incorrect (Hefele, iii. p. 348); also Bianchi, n. 7, p. 388 seq., showed it to be so.

[15] Hefele, iii. p. 354 seq. Many arguments are brought for the Greek accounts by Bianchi, l.c. pp. 391-415. Orsi, Del dominio temporale della Chiesa, c. i. p. 1 seq. ed. 1742.

§ 11.

But above all, Gregory[1] appeals to the words which Christ spoke to the Apostles, 'He that heareth you heareth Me, and he that despiseth you despiseth Me' (Luke x. 16). He remembered the words of Gregory the Great, who wrote:[2] 'He should not be numbered amongst kings who rather destroys than governs his kingdom, and alienates from Christ all whom he can induce to partake of his perversity. Incited by the lust of dishonourable gain, he seeks to lead the Bride of Christ into captivity, and with wicked daring to bring to naught the mystery of the Passion of the Lord. For transgressing the bounds of the royal authority it is his endeavour to reduce the Church, whom our Lord redeemed with His blood and willed to be free, into the position of a servant.[3] How much better were it not for him to acknowledge himself her servant, and follow the example of God-fearing princes in showing towards her respect and obedience! But so insolent is he, that the head of all Churches, the Roman Church, he considers his property, and over the mistress of nations (Lam. i. 1) usurps the right of earthly power. This was forbidden by Him, who committed the Church specially to St. Peter.' Gregory VII. never lost sight of the teaching of the Fathers nor of ancient traditions. The application of his principles was new, not the principles themselves; and it was his acts, not his principles, which created in many so much astonishment.[4]

[1] L. ii. Ep. 73, p. 424; l. iii. 10, ad Henr. p. 440; P. ii. Ep. 59, p. 702; Ep. 34, p. 681; Ep. 8, p. 651; l. ii. Ep. 40, p. 393, ad univ. fid.

[2] Greg. M. Comment. in Psalm. poenitent. t. iii. P. v. Opp. ed. Maurin. p. 518; cf. p. 532. The genuineness of these Commentaries (see ib. p. 464) has been much questioned, and many have ascribed its authorship to Gregory VII. himself; but if they are not the work of Gregory I. they were certainly not composed by Gregory VII. It is a moot point who is the emperor or king pointed at by the words: 'Iste, qui hoc tempore Ecclesiam persequitur.' Marc. Anton. de Dominis de Republ. Eccl. c. xi. n. 31, thinks of Justin II.; Baronius, a. 595, n. 19, of Mauricius; Bianchi, t. i. l. i. c. i. § 7, p. 68 seq. of Antharis, King of the Lombards. The Maurists favour the second and third hypotheses. For a detailed defence of their genuineness, vide Bianchi, t. iii. l. i. c. i. § 7, n. 20 seq. pp. 70-76.

[3] Ecclesiam quippe, quam . . . Salvator noster voluit esse *liberam*, hanc iste potestatis regiae jura transcendens facere conatur ancillam.

[4] Otto Fris. Chron. vi. 35; de Gest. Frid. I. l. i. c. 1. Bossuet, l. i. sect. l.c. vii. p. 98, ed. Mog. 1788, tries to make more of it than the matter warrants, although Otto, according to his position, was not entirely impartial. Bianchi, t. i. l. ii. § 7, n. 6 seq. p. 257 seq.

§ 12.

It has been emphatically asserted that Gregory was opposed in his view by his friend Cardinal Peter Damiani, and that the latter spoke of the harmony of the spiritual and temporal power, not of the subordination of the temporal to the spiritual; also that not both swords, but only one, the spiritual sword, was held by the Church. But we must remember, first, that in the sense of the Middle Ages the harmony of the two powers does not entirely exclude the subjection of the State to the Church, as we shall show elsewhere more in detail; and, secondly, that Gregory very frequently speaks of this harmony of the two powers, and presupposes it as the foundation of his view;[1] thirdly, that as more modern authors have done,[2] Gregory treats regularly only of a spiritual sword, that of Peter.[3] Earlier the sword of Constantine had been ascribed to kings, and the sword of Peter to bishops.[4] Henry IV. reproached Gregory for pretending to temporal as well as spiritual power; whereas St. Luke xxii. 38 speaks of two distinct swords, the spiritual and civil.[5] This distinction is not recognised by later writers, who say that a double sword belongs to the Church (that is, Christendom, for all Christian kingdoms were then in the Church)[6]—the spiritual sword, *i.e.* the Word of God (Ephes. vi. 17), and the civil sword; the former to be drawn *by* the Church, the latter *for* the Church, for the civil sword should serve the kingdom of God as well as earthly kingdoms.[7] Fourthly, Cardinal Peter Damiani above all objected to ecclesiastics engaging in war, and refused to the Pope as well as to all ecclesiastics the use of the civil sword,[8] which is forbidden them also by the canons of the Church.[9] Still, in cases of extreme necessity, bishops have used civil force in defence of their possessions; and Leo IX. was compelled from the highest motives to defend the States of

the Church against the Normans, without thereby incurring any reproach from Damiani. The Church has never pronounced a union of the spiritual and civil powers to be impossible. That earthly weapons must be used to protect higher immaterial goods is indeed self-evident, and has been maintained theoretically and practically by every State engaging in a just war of defence.[10] Lastly, Peter Damiani desired to see kings reverence and treat the Church of Rome as their true mother.[11] He regarded her as being placed over divine things, and belonging therefore to a higher sphere.[12] There never appears the slightest dispute between him and Gregory.

[1] L. i. Ep. 75, p. 348, ad Philipp. Reg.: 'Cum virtus Christianorum principum in ejusdem regis (Christi) castris ad custodiam Christianae militiae *nobiscum convenire* debeat.' L. i. Ep. 19, ad Rudolph. Duc.: 'Sicut *duobus oculis* humanum corpus temporali lumine regitur, ita *his* duabus dignitatibus (Sacerd. et Imp.) in pura religione *concordantibus* corpus Ecclesiae spirituali lumine regi et illuminari probatur.' L. ix. Ep. 28, ad univ. fidel. p. 628: '*Quam pacem* (inter pontificatum et regnum) opitulante Domino, *sicut Christiana devotio cupit et postulat*, in eodem Concilio instaurare et confirmare optamus.' P. ii. Ep. 39, p. 688: 'Ut causa jurgiorum et discordia, quae inter regnum et apostolicam Sedem jam dudum agitatur, annuente Domino congruum valeat finem sortiri, vos ad synodum . . . . invitamus.'

[2] Reg. l. ii. Ep. 76, ad Bamb. p. 427; l. vi. Ep. 14, 26, pp. 523, 533; l. vii. Ep. 4, ad Wezelin, p. 548; l. viii. Ep. 3, ad Alphons. Reg. Castel. p. 577; l. viii. Ep. 5, p. 579; P. ii. Ep. 26, 49, pp. 671, 696. Greg. ap. Paul. Bern. c. vii. n. 61, p. 73.

[3] Card. Deusdedit, Prolog. lib. c. invasor. (Mai Nova PP. Bibl. vii. P. ult. p. 77): 'Pugnet rex gladio materiali, "quoniam Dei minister est et vindex in iram his qui male agunt."'

[4] In 969 by King Edgar of England. Hard. Conc. vi. i. p. 675.

[5] Manifesto of 1076. Mansi, xx. 466. Pertz, Leg. ii. 48.

[6] 'Gladius' means jurisdiction. Du Cange, v. Spatha. Grimm, Rechtsalthümer, p. 167.

[7] Cf. Sachsenspiegel, vol. i. a. 1; others infrà, a. 8.

[8] Petr. Dam. l. iv. Ep. 9, ad Firman. Ep.: 'Inter regnum et sacerdotium propria cujuscunque distinguuntur officia, ut rex armis *utatur* saeculi et sacerdos accingatur gladio spirituali, qui est verbum Dei. . . . Ozias rex, qui sacerdotale usurpat officium, lepra perfunditur, et si sacerdos arma *corripit*, quod utique laicorum est, quid meretur?'

[9] Thomassin, de Vet. et Nov. Disc. P. iii. l. i. c. lxviii. n. 4. seq. Gratian, P. ii. caus. 8.

[10] Bellarm. de Rom. Pont. v. 9. Bianchi, t. ii. l. iv. § 9, n. 13, p. 132 seq. Pignatelli, Consult. Canon. t. ix. consult. 68, n. 8 seq. p. 145.

[11] Dam. Opusc. iv. (Migne, cxlv. p. 71): 'Porro autem Rom. Ecclesia

multo nobilius atque sublimius quam mater carnis mater est regis' (p. 72). 'Carnalis ergo mater adjuvat filium in rebus terrenis et mater Ecclesia filio suo praebere non debet auxilium in spiritualibus donis?' Claus. Dict. pp. 86, 87: 'Sublimes istae duae personae tanta sibimet invicem unanimitate jungantur, ut quodam mutuae charitatis glutino et rex in Rom. Pontifice et Rom. Pontifex inveniatur in rege, *salvo sc. suo privilegio Papae*, quod nemini praeter eum usurpare permittitur. . . . . Ille tamquam parens paterno semper jure praemineat, iste velut unicus ac singularis filius in amoris illius amplexibus requiescat.'

[12] Dam. l. vii. Ep. 3, ad Henric. p. 121.

§ 13.

It has also been said that in his actions Gregory dealt unequal measure, 'visiting with the utmost severity in Henry IV. things which in William the Conqueror he did not venture to punish.' But we know that for a long time Gregory believed William to be his faithful ally in the reform movement, the Synod of Rouen having coöperated in it, and that he long entertained a favourable opinion of William, who never sided with the antipope.[1] Gregory called him the dearest and only son of the Church of Rome; saying that he manifested towards her the disposition of an affectionate son, and distinguished himself above all other princes.[2] For a considerable time he remained without accurate information of the circumstances occurring in the remote island, especially since William prevented the bishops from going to Rome, of which Gregory complained in 1079.[3] He afterwards sent him many admonitory letters,[4] and endeavoured to gain Queen Mathilda.[5] He wrote thus to the legate Hugo of Die:[6] 'Although the King of England shows himself not so religious as we could desire, still he is more deserving and better than other kings, in that he neither ruins nor sells the Church of God, that he seeks to secure peace and justice for his subjects, that he has made no covenant with the enemies of the Cross of Christ against the Church of God, that he obliges priests to leave their wives, and enforces the payment of tithes upon the laity.' For these reasons he was justified in pursuing towards William a milder and more considerate course of action. Gregory had always hoped that good would come of William, but did not conceal from him his just

displeasure, as, for instance, when William imprisoned his brother, paying no respect to his episcopal dignity.[7] William complied with the request of the Papal legate that the long-intermitted payment of Peter's pence might be reëstablished; but when the demand was made him in these times of schism and perverse strife against the Holy See to take an oath of allegiance to the Pope, he refused, on the plea that his predecessors had not taken such an oath, and that he had never promised to do so.[8] It is much to be doubted whether this oath of allegiance (fidelitatem facere) is the same as the feudal oath;[9] for as the Pope's own letters only claim obedience in spiritual things,[10] and as William's refusal to allow the bishops to go to Rome was a great offence to the Pope, an oath of obedience to the Church was much more to the point than a feudal oath; also the legate Zeuzo or Teuzo said many things which he was not commissioned to say.[11] England had prior to this entered into especially close relations with the Holy See.[12] Alexander II. had declared the country to be under the special protection of St. Peter,[13] as William acknowledged at his conquest.[14] Gregory was forced by his position to seek protection and support from the better-disposed princes.

[1] Mansi, xx. 113 seq. 306, 398. Hefele, Conc. v. pp. 29, 141, 142.

[2] L. i. Ep. 31, ad Lanfranc. Cantuar. 1073, p. 314; Ep. 70, ad Regem Angl. a. 1074, p. 344 seq.: 'Inter reges te solum habemus, quem prae aliis diligere suprascripta credimus.' Cf. l. iv. Ep. 17, ad eund. a. 1077, pp. 470, 471; l. v. Ep. 19, pp. 504, 505, a. 1078; l. vii. Ep. 23, p. 566: 'Gemma principum esse meruisti;' P. ii. Ep. 28, pp. 674, 675.

[3] L. vi. Ep. 30, p. 535, ad Lanfranc.; l. vii. Ep. 1, p. 845, ad Hubert. Subdiac.; l. ix. Ep. 20, p. 622, ad Lanfranc.

[4] L. vii. Ep. 28, 25, pp. 566, 568 seq.

[5] L. vii. Ep. 26, p. 569.

[6] L. ix. Ep. 5, p. 610.

[7] L. xi. Ep. 2, p. 642.

[8] P. ii. Ep. 11, p. 748. Lanfranc. Opp. p. 304. Cf. Döllinger, Lehrbuch, ii. pp. 140, 141.

[9] Bianchi, t. i. l. ii. § 13, n. 6, pp. 346, 347.

[10] *E.g.* l. vii. Ep. 23, a. 1080.

[11] L. vii. Ep. 1: 'Significasti .... Zeuzonem quasi ex nostra parte legatum .... verba fecisse, quae noveris ex nobis mandata non esse.'

[12] King Ina, 725; Offa of Mercia, 794. Pag. jun. Brev. Rom. Pont. in Greg. VII. n. 20; Hadr. I. n. 56, 57. Bianchi, l.c. n. 3, p. 313 seq.

[13] Alex. II. Ep. 8, ad Willelm.: 'Novit prudentia tua, Anglorum regnum ex quo nomen Christi ibi clarificatum est, sub Apost. principis manu et tutela exstitisse.' Mansi, xix. 949. Jaffé, n. 3524, p. 400.

[14] Ranke, Englische Geschichte, i. pp. 41, 53.

Part II. Gregory did not treat all Princes as Vassals.

§ 1. Feudal suzerainty over single kingdoms. § 2. Hungary and Poland. § 3. Bohemia. § 4. Denmark. § 5. Spain. § 6. Corsica and Sardinia. § 7. Various relations of single States towards the Holy See. § 8. Gregory's declaration that Peter was set as a prince over all the kingdoms of the earth.

§ 1.

It is an unfounded assertion that Gregory VII. treated *all* princes as vassals of the Holy See.[1] He made no claim to feudal suzerainty over France.[2] His letters to King Philip speak only of religious obedience in matters purely ecclesiastical,[3] and all he demanded was that every householder should contribute one penny as an alms to the Holy See, at that time so sorely oppressed. In support of this requisition, he appealed to the example of Charles the Great, who had allowed this subsidy to be raised in three places in his empire, and had ceded to St. Peter the land of the Saxons. In support of the first assertion he appeals to a volume of documents, at that time preserved in the archives of St. Peter.[4] These documents are not now extant; but the circumstance is very probable and the custom very ancient; but it proves no political dependence.[5] With regard to Saxony, we know that Charles the Great dedicated and offered to St. Peter the first church consecrated there.[6] Apulia and Calabria were held in fief from the Holy See from 1059, or perhaps from 1054, and this was renewed under Gregory VII.[7] In 1076, Demetrius of Dalmatia, to secure peace for his dominions, vowed a yearly tax to St. Peter. He received the title of king from the Pope, and was invested by the Papal legates with standard, sceptre, sword, and crown.[8] When in 1079 a certain Wezelin revolted against Demetrius, the Pope forbade him[9] to take up arms against the king, placed there by apostolic authority, or to break the faith which had

been plighted to St. Peter. He declared that any attack made upon Demetrius would be as if done to the Holy See, and that to her tribunal Wezelin must appeal if he had just ground of complaint. It was neither unusual nor uncommon for princes to place themselves and their dominions under the protection of St. Peter.[10] Michael Bogoris of Bulgaria appears to have done so under Nicholas I.,[11] and Swatopluk of Moravia under John VIII.[12] In later mediæval times such cases were extremely frequent.

[1] Bossuet, l.c. l. i. sect. 1, c. xii. p. 108 seq. Huber, p. 8.
[2] Thomassin, de Vet. et Nov. Discpl. P. iii. l. i. c. xxxii. n. 13. Döllinger, Lehrb. ii. p. 140.
[3] L. i. Ep. 35, 75, pp. 317, 348; l. ii. Ep. 5, 18, 32, pp. 362 seq. 376, 387; l. viii. Ep. 20, p. 593.
[4] L. viii. Ep. 23, pp. 603, 604.
[5] Bianchi, t. i. l. ii. § 13, n. 1, p. 339 seq.
[6] Carol. M. Cap. Baluz. i. p. 246. Bossuet, l.c. p. 110.
[7] Hefele, Conc. iv. 725, 767 seq.; v. 13, 139. Cf. Baron. a. 1059, n. 70; a. 1080, n. 39; Murator. Antiqu. vi. 33.
[8] Baron. a. 1076, n. 65 seq. Georg. Prag. Annal. Reg. Hung. Vindob. 1764, t. i. p. 76. Cattalinich, Storia della Dalmazia, ii. 250.
[9] L. vii. Ep. 4, ad Wezelin, p. 548.
[10] Bianchi, l.c. § 15, n. 11, p. 377.
[11] Anastas. Biblioth. Praef. in Conc. viii. Baron. a. 869, n. 73.
[12] Joh. VIII. Ep. 247 (Mansi, xvii. 181): 'Divina gratia inspirante *contemtis aliis saeculi hujus principibus* B. Petrum .... habere *patronum* et in omnibus adjutorem ac defensorem pariter cum nobilibus viris fidelibus tuis. .... Amore fidelissimo elegisti et usque ad finem sub ipsius et vicarii ejus defensione colla *submittens* pio affectu cupis auxiliante Domino utpote filius devotissimus permanere.'

§ 2.

From the time of Sylvester II. (999-1003), Hungary and Poland had been united to the Holy See by a similar tie. 'Like so many other nations, both of these are indebted solely to the Holy See for the germ of their national independence and development. Sylvester bound them to the See of Peter as members of one Christian family, not inferior to their brethren, rescued them from the predominating German influences, and gave them the means of preserving to the present day a strong nationality.'[1] Hungary was subject to the Holy See from the

time of St. Stephen,[2] on whom the Pope conferred the title of king, as Kings Andreas and Ladislaus in the thirteenth century openly acknowledged.[3] Gregory was anxious that Hungary should preserve its independence, and not become a feudal dependent upon Germany. The national party had often rebelled against subjection to Germany in the time of the Emperor Henry III. Solomon had been crowned king whilst still a child, and during the lifetime of his father Andreas; but his uncle Bela usurped the throne, and kept it till his death in 1063. Solomon was then proclaimed king by the agency of Henry IV., who gave him his sister in marriage. Bela's sons, Geisa and Ladislaus, received only some counties. In the contention between Solomon and Geisa in 1074, Henry IV. supported the former, because he had consented to hold Hungary as a German fief.[4] Gregory protested against this foolish weakness as contrary to the rights of the Holy See recognised by Henry III.[5] He looked upon Solomon's defeat by Geisa as a punishment;[6] but at the same time endeavoured to negotiate peace between him and Geisa, whom he only recognised as duke.[7] He wished Hungary to remain free (in proprio libertatis statu), and subject to no king of any other kingdom, owning no superior but the Church of Rome, who treated all her subjects not as slaves, but as sons. The King of Hungary should not be 'regulus,' a viceroy, but 'rex,' a true king.[8] Geisa and Ladislaus reigned one after the other, and remained faithful to the Pope. In 1079, Gregory praised the religious obedience of Ladislaus in terms which show his paternal affection, and could humiliate no king;[9] and he was always attentive to the affairs of Hungary.[10] As to Poland Boleslaw II., Duke of Poland, accepted the title of king from Henry IV., A.D. 1076, and received the crown from his bishops.[11] Gregory, who had praised him the year before for the respect he had shown towards the Holy See,[12] was afterwards obliged to excommunicate him for the murder of St. Stanislaus, 1079; and Boleslaw in consequence fled to Hungary, where he died in misery. Gregory never asserted any special claims over Poland.

[1] Dudik, Mährens Allg. Gesch. vol. ii. p. 98.
[2] Vita S. Steph. Reg. ap. Sur. t. iv. Sept.

[3] Raynald. a. 1233, n. 51; a. 1279, n. 31. Cf. a. 1233, n. 52; 1279, n. 32 seq.

[4] Dudik, l.c. pp. 238, 284, 292 seq. 367 seq. Cf. Bianchi, l.c. § 15, n. 2-7, pp. 368-374.

[5] L. ii. Ep. 13, p. 373, Salamoni Regi: 'Regnum Hungariae S. Rom. Ecclesiae *proprium* est a rege Stephano olim B. Petro cum omni jure et potestate sua oblatum et devote traditum. Praeterea Henricus p.m. imp. ad honorem S. Petri regnum illud expugnans victo rege et facta victoria ad corpus B. Petri lanceam coronamque transmisit et pro gloria triumphi sui illuc regni direxit insignia, quo principalem dignitatem ejus attinere cognovit. (Cf. Giesebrecht, l.c. ii. 625). Tu jus et honorem S. Petri, quantum ad te, imminuisti et alienasti, dum ejus regnum a rege Teutonicorum in beneficium, sicut audimus, suscepisti.'

[6] L. ii. Ep. 63, p. 414, Geisae Duci, a. 1075.

[7] Ib. Ep. 70, p. 421. Cf. l. i. Ep. 58, p. 335.

[8] L. ii. Ep. 63, 70, cit. Martin Gerbert of St. Blase remarks on this (De legitima eccles. potestate circa sacra et profana. Mon. S. Blasii, 1761, l. iv. c. i. n. 18, p. 660): 'Secundum horum verborum sententiam insignis haec potius praerogativa haberi poterat, qua quis ab omni solutus potestate hujus saeculi soli Deo et Ecclesiae obnoxius foret.'

[9] L. vi. Ep 29, p. 534.

[10] L. iv. Ep. 25, p. 481, ad Strigon. Aep.

[11] Röppel, Hist. Poland, vol. i. p. 190, book i. chap. viii.

[12] L. ii. Ep. 73, pp. 423, 424.

§ 3.

As to Bohemia, Duke Spitinev II. received in 1059-1060 from the Holy See the privilege of wearing a mitre, and he promised to pay a yearly tribute of a hundred silver marks.[1] Alexander II. confirmed this privilege in favour of Duke Wratislaw; and Gregory VII. wrote to him at some length on this matter,[2] as well as on the dispute as to the bishop of Prague.[3] In 1074, the duke was still remitting to Rome the hundred silver marks *sub censi nomine*.[4] The reason of the duke's desire to wear a mitre may be found in his wish to appear to the people as impressive as his brother Jaromir, with whom he was not on good terms, and who was a bishop. Wratislaw, who had been wavering since 1075, at length adopted the cause of Henry IV., and allied himself closely with Germany. He was crowned king by Henry's desire; but his coronation was not recognised even by the Antipope Clement III., still less by the lawful Popes who succeeded.[5] Gregory VII., in 1079,[6] sent him admonitions, blamed him for holding intercourse with excom-

municated persons, *i.e.* Henry and his followers, and forbade the use of the Sclavonic Liturgy, but never asserted any political claim over him.[7]

[1] Dudik, l.c. pp. 287 seq. 350 seq. On the tribute (census) vid. Thomassin, l.c. n. 11.
[2] Reg. l. i. Ep. 38, p. 319, a. 1073.
[3] Reg. l. i. Ep. 17, 44, 45, 61, 78, pp. 299, 324 seq. 337, 351; l. ii. Ep. 7, 8, 71, 72, pp. 367 seq. 422 seq.
[4] L. ii. Ep. 7, p. 367.
[5] Dudik, l.c. pp. 352 seq. 423, 431-433.
[6] L. vii. Ep. 11, p. 554.
[7] Innocent III. (l. vii. Ep. 49, Migne. ccxv. p. 333) in 1204 recognised as king, at the request of Otho IV., the Duke of Bohemia, crowned by Philip of Swabia (who was not recognised by Rome as King of Germany), and confirmed (ib. Ep. 54, p. 339) the imperial privileges conferred upon him.

§ 4.

Swen, King of Denmark, made to Alexander II. the promise of a yearly tribute.[1] In 1075, Gregory asked if he were still of the same mind, and as he desired a closer intercourse with the Holy See, recommended to him fidelity to the Church, and just government of his people.[2] In his negotiations with Alexander II., Swen desired to make St. Peter his debtor, hoping thereby to obtain his special protection for himself and his kingdom.[3] Gregory mentioned[4] a rich province not far from Rome (somewhere in the south of Italy), which was in the possession of heretics (Saracens),[5] and which he would give to a son of the king who was willing to fight for the Holy See. In 1077, he reminded Swen's son and successor of his father's loyalty, and recommended it to his imitation;[6] and later he wrote to censure the superstition of the Danes,[7] but without making any demand beyond the most ordinary obedience to the Church. No trace of a claim to feudal sovereignty is to be found in Gregory's letters to the Kings of Norway and Sweden,[8] nor in those to the Venetian republic.[9]

[1] Baron. a. 1062. Jaffé, Reg. n. 3379, p. 390.
[2] L. ii. Ep. 51, 75, pp. 402, 426, 427.
[3] L. ii. Ep. 75, p. 426.
[4] L. ii. Ep. 51, p. 403, v. fin.

[4] On the sea coast, and near Rome, there were no heretics properly so called. Saracens must be meant. In Gregory's time 'infideles' were also called heretics. On the Saracens in Italy, vide Chron. Cassin. i. 43, 50, 53; Baron. a. 1016; Bianchi, l.c. § 13, n. 9, 10, pp. 349-351.

[5] L. v. Ep. 10, p. 495 seq.

[6] L. vii. Ep. 21, p. 563 seq.

[7] L. vi. Ep. 13, p. 521; l. viii. Ep. 11, p. 584.

[8] L. ii. Ep. 39, p. 391; l. iv. Ep. 26, 27, p. 482; l. ix. Ep. 8, p. 613.

§ 5.

We know on Gregory's assurance that Spain, on the contrary, from old times belonged to the Holy See, and was tributary to her.[1] It is very possible Gregory was in possession of documents that have been lost to us, and quite credible that from 588 to 712 offerings may have passed with regularity from Spain to Rome; for we know that Reccared sent rich gifts to St. Peter.[2] Gregory's letters to the Kings of Arragon and Navarre,[3] as well as to Alphonso of Castile,[4] only speak of the faith and obedience due from all to the Church of Rome.[5] The payment of a tribute can in this instance the less prove a feudal tie that it was always customary with the kings of this peninsula, from private devotion, to make their kingdoms tributary to some church or monastery; *i.e.* Alphonso of Castile chose the monastery of Clugny and Alphonso of Portugal that of Clairvaux.[6] Before Gregory's pontificate, Count Ebulo of Racejo accepted from the Holy See the privilege of fighting against the Saracens in Spain, with the condition of possessing the territory he conquered from them under the authority of the Holy See, in return for a yearly tribute.[7] Count Berengar of Barcelona relinquished to the Holy See (A.D. 1091) the town of Taracona, which he had taken from the Moors, and held it under payment of a yearly tribute; an arrangement accepted by Urban II.[8] In this manner conquerors secured their claims from the encroachments of rival powers, whose attacks were forbidden by the Pope, and at the same time acquired a practically independent dominion. Gregory's dealings with Spain were mainly directed to the introduction of the Roman Liturgy and the restoration of a closer relation with Rome.[9] During the reign of Gregory VII. Bertrand, Count of Provence, made over his county to the Holy See

as a free gift; and after his death the Genoese and Pisans, who had landed in Africa, extorted from the conquered Saracens a yearly tribute to be paid to Rome.[10]

[1] L. i. Ep. 7, ad Princip. Hisp. p. 289; l. iv. Ep. 28, ad Hisp. p. 485.

[2] Gregor. I. l. ix. Ep. 122 (al. vii. 127). Ep. Reccaredi ad Gregor. M. ap. Baluz, Miscell. l. v. Cf. Roder, Tolet. Aep. l. ii. c. xx.; Bianchi, l.c. § 14, n. 1, 2, p. 352-354.

[3] L. i. Ep. 63, p. 339; l. ii. Ep. 50, p. 401. Mansi, xx. 622, P. ii. Ep. 3, p. 645.

[4] L. i. Ep. 64, p. 340; Ep. 83, p. 355; l. viii. Ep. 3, p. 577; l. ix. Ep. 2, p. 604; l. vii. Ep. 6, p. 549 seq.

[5] The 'servitium, quod B. Petro inde solebat fieri' (l. iv. Ep. 28), is not to be interpreted by the strict feudal law; but often means first-fruits or some similar tax. Bianchi, l.c. n. 3, pp. 355, 356.

[6] Annal. Cisterc. a. 1141. Petrus Ven. de Mirac. l. i. c. ult. Thomassin, l.c. c. xxxii. n. 9.

[7] L. i. Ep. 7, ad Princ. Hisp. a. 1073.

[8] Urban II. Ep. 6, 7. Mansi, xx. 648. Jaffé, n. 4067. Thomassin, l.c. n. 8. Cf. also the note to Bossuet, l.c. c. xiii. p. 112.

[9] Cf. again l. iii. Ep. 18, p. 448, Simeoni Ep.; l. iv. Ep. 28, p. 484; P. ii. Ep. 70, p. 713.

[10] Baron. a. 1081, n. 33; a. 1087.

§ 6.

The See of Rome had certain special rights over the islands of Corsica and Sardinia. Corsica is mentioned in ancient documents as appertaining to the States of the Church;[1] and Gregory rejoiced that, in 1077, it desired to return to the Roman Church.[2] He appointed the Bishop of Pisa as his vicar in the island, recommending the people and clergy to render him obedience.[3] Urban II., at the request of the Countess Mathilda, in 1091, confirmed this, with the condition of a yearly payment to the Lateran of a tribute of fifty pounds of Lucca coin.[4] Gregory required from the governors of Sardinia a renewal of the old religious obedience and close relation with Rome, and wrote to them concerning various affairs of the island.[5] It was a matter of no import, and merely an accidental circumstance, that the son of Demetrius of Russia desired to receive his kingdom from the hand of St. Peter.[6]

[1] Lib. Pontif. in Hadr. I. Cenni Mon. ii. 60, 61, 125. Records of the Othos and of Henry II. Leo III. in 808 speaks explicitly in the letter to Charles of the donation.

[2] L. v. Ep. 4, p. 489. For about 189 years Rome had no power over the island. Limperani, Istoria della Corsica, Roma, 1780, ii. 2.
[3] L. vi. Ep. 12, pp. 520, 521; l. iv. Ep. 2, pp. 487, 488.
[4] Ughelli, Italia Sacr. iii. 369. Jaffé, n. 4066, p. 454.
[5] L. i. Ep. 29, pp. 311, 312; Ep. 41, p. 322; l. viii. Ep. 10, p. 583.
[6] L. ii. Ep. 74, p. 425. Cf. Pichler, Gesch. der Kirchl. Trennung, ii. p. 8.

§ 7.

It is clear that all States in the Middle Ages were not equally dependent upon the Holy See. There was a universal subjection of States on matters of religion; but beyond this, in many instances a special subjection, founded on various titles, generally on the personal desire of the ruling prince. There would have been nothing to find fault with if the Popes, under existing circumstances, had endeavoured gradually to organise a system of States with the aim of insuring the freedom of peoples, the sovereignty of Christian principles, and the protection of the weak against the strong; a system which, maintained by the voluntary subjection of princes and peoples, would have turned all its advantages to their profit, and secured honour and stability to Christian principles as well as to individual States.[1]

However existing, traces are too incomplete, and single instances cannot be taken as proofs of vassalage. Mistakes easily arose, because the feudal system was the groundwork of almost all order, and any secondary authority was called vassalage.[2] Certain is it that the Popes acted in this matter on no widespread, deep-laid, political scheme, inherited by one from the other; things took shape spontaneously, fashioned by impending dangers, by the spirit of chivalry, or by religious enthusiasm. William of Burgundy swore, in presence of Alexander II., of bishops, abbots, and a multitude of people, to draw his sword as often as necessity required, in defence of right and of the possessions of St. Peter;[3] and many others did the same; they dedicated themselves to the Prince of the Apostles, or to some other saint, or to some holy place, and made themselves tributary thereto.[4] This subjection served also to show that a prince placed under the protection of Heaven and of the saints was independent of any other earthly power. Gregory VII.

clearly points this out in his letters to Hungary. The Kings of Scotland appealed from the Kings of England and other rulers, saying that they were subject *only* to the Pope.[5]

[1] Histor. Polit. Blätter, 1857, vol. xl. pp. 943-972.

[2] Du Cange, Glossar. inf. Latin. v. Feudus. Likewise Hallam, Lingard, and others.

[3] Greg. VII. l. i. Ep. 46, p. 325.

[4] Norway was dedicated to the king and martyr Olaf, and was subject to the archbishop (Raynald. a. 1073, n. 19). Godfrey of Bouillon was homo S. Sepulchri et Patriarchae; the Prince of Antioch was vassal of the Patriarch of that place. Willelm. Tyr. ix. 15 seq.; x. 4; xv. 12. Raynald. a. 1205, n. 37. Thomassin, l.c. c. xxxi. n. 15; c. xxxii. n. 1. Cf. also Fleury, t. xiii. l. lxiv. n. 67; l. lxv. n. 2; Michaud, Hist. des Croisades, t. ii. p. 10.

[5] Thomassin, l.c. n. 6, 15 seq. Rayn. a. 1299, n. 14, 17.

§ 8.

But it is said Gregory asserted, 'that for all time and in every place Christ appointed Peter prince over all the kingdoms of the earth.'[1] But other Popes said this before Gregory;[2] and it may rightfully be said[3] in reference to the universal office of pastor conferred upon St. Peter (St. John xxi. 15 seq.), unlimited as to place; to the power of the keys, in heaven and on earth (St. Matt. xvi. 19); and to the words of Jeremiah,* which have been referred to St. Peter.[4] When Leo the Great said Christ made St. Peter prince over the whole Church,[5] he was understood to mean that as all kingdoms of the world should belong to the Church,[6] he was prince over all earthly kingdoms. In this sense St. Leo's words still stand in the Breviary,[7] and they have never been taken to imply anything injurious to civil allegiance. The principle Gregory wished to enforce was, that all princes should acknowledge the sovereignty of Christ,[8] and, not making their own will the supreme law, should be guided by the law of God, as announced to them by the successor of St. Peter. 'If,' wrote Gregory[9] in 1074, 'we should suffer princes to rule as they please, and to trample God's justice under foot,

* 'See, I have this day set thee over the nations and over the kingdoms, to root out and to pull down, and to destroy, and to throw down, to build and to plant.' i. 10.

if we should silently consent to this, we should receive their friendship, gifts, marks of submission, praise, and much honour. But as to do this does not accord with our office and our duty, there is nothing which, by the grace of Christ, can separate us from His love; it is safer for us to die than abandon His law.' The Pope, who possessed no material power, and relied for support upon moral principles alone, must have meant that the law of God should everywhere be revered and obeyed; to enforce this was not merely his right, but his most solemn duty.

[1] L. i. Ep. 63, ad Sanc. Reg. Arag. p. 339.

[2] Nicol. II. Ep. ad Mediolan. (c. i. Omnes, d. 22): 'B. Petro terreni simul et coelestis imperii jura commisit.' Bossuet, P. i. l. i. sect. 2, c. xxxvi. p. 179, explains the passage with a reference to Matt. xvi. 18.

[3] Mamachi, Orig. et Antiqu. iv. p. 179.

[4] By very many authors. Vide Anti-Janus, p. 136.

[5] Leo M. Serm. 4, c. iv. p. 19: 'Quod tantam potentiam dedit ei, quem totius Ecclesiae principem fecit.'

[6] Optat. c. Parmen. ii. 1. Aug. de Unit. Eccl. c. viii. n. 20 (on Ps. ii. 8), in Ps. lxxi. et cxxi.

[7] Responsorium to the sixth lesson on the feast of SS. Peter and Paul, 29th June: 'Tibi tradidit Deus omnia regna mundi.'

[8] Greg. l. iii. Ep. 10, p. 439.

[9] L. ii. Ep. 12, p. 372, ad Halberst. Ep.

Part III. It is false that Gregory taught that the Pope could take and dispose as he would of Kingdoms and of the Possessions of Private Persons.

§ 1. Gregory's words. § 2. Personal holiness of Popes. § 3. Gregory's death in exile. § 4. Alleged fruitlessness of his conflicts. § 5. Their result. § 6. Gregory's aim to free the Church from ignominious shackles.

§ 1.

It is asserted that, according to Papal doctrine as declared by Gregory VII., at a Council held in Rome in 1080, the Pope, when presiding over a Council of bishops, could, in virtue of his authority to bind and to loose, dispose absolutely not only of empires, kingdoms, and principalities, but of the possessions of all men.[1] But as a fact Gregory does not attribute this power

to bishops assembled with him in Council, for of these no mention was made, but to the Apostles Peter and Paul, upon their thrones in heaven,[2] and thus indirectly to God, who will refuse nothing to these the Church's potent guardians and intercessors. Gregory prays that they will obtain that Henry, being mercifully chastised by God in this life, may be led to amend his ways, that all the world may acknowledge the power of the holy Apostles, and that sinners may do penance, and save their souls (with a reference to 1 Cor. v. 5).[3] Gregory's words here, which certainly contain no dogmatic definition, have met with the same misrepresentation[4] as has befallen other passages.[5]

[1] Allgemeine Zeitung, 19 June 1870. Cf. Schulte, i. p. 32.

[2] Hefele notes this quite justly against Stenzel and Gfrörer, Conc. v. p. 132. Also Bossuet, l.c. sect. 1, c. x. p. 104. Cf. Fessler, Sammlung vermischter Schriften, Freib. 1869, pp. 73-75; The True and the False Infallibility, trans. p. 70, original p. 41.

[3] The words are: 'Agite nunc, quaeso, patres et principes sanctissimi' (who in the beginning are addressed as Petre princeps Apostolorum et Paule doctor gentium), 'ut omnis mundus intelligat et cognoscat, quia si potestis in coelo ligare et solvere, potestis in terra imperia, regna, principatus, ducatus, marchias, comitatus et omnium hominum possessiones pro meritis tollere unicuique et concedere. . . . Addiscant nunc reges et omnes saeculi principes, quanti vos estis, quid potestis. *Confundantur* utinam ad poenitentiam, ut spiritus sit salvus in die Domini.' Cf. l. viii. Ep. 17, pp. 590, 591.

[4] If the same remark should be made now as on another occasion, when a similar misrepresentation was corrected (A. Z. 24 March 1871), viz. 'occasionally the Pope did not wait until the Apostles granted his prayer,' we reply that this is a confusion of two distinct things. The *act of the Pope*, which in no way involved the actual loss of dominion nor proceeded upon the general principle that the Pope could at will depose or appoint kings, this *act* was not denied by Bishop Fessler; who only sought to prove, and did prove, that Gregory did not lay down *this general principle ascribed to him*. Shifting the point in question has always been a favourite practice with the Janus party.

[5] Another passage is quoted (in the Allgemeine Zeitung, 19 June 1870, No. 37) from Gratian, c. xv. d. 81, according to which any one commits the crime of *idolatry* who assists at the Mass of a married priest, and the blessing of such a one becomes a curse. This passage, which, as it stands, is not to be found in Gregory's epistles, is made up of two parts—the one, even to the words of the Prophet, 'I will curse your blessing,' as the Roman censor observes, is to be found in Marianus Scotus (Pertz, ser. v. 561; Migne, l.c. P. ii. Ep. 55, p. 692; Mansi, Suppl. ii. 2; Migne, l.c. pp. 785-

788); the other is very common with Gregory, to wit, that as in 1 Kings xv. 22, 23, and in Greg. M. Lib. ult. Moral. c. x., *disobedience* is called idolatry (l. ii. Ep. 45, 66, pp. 397, 416; l. iv. Ep. 11, p. 465; l. v. Ep. 24, p. 480; l. vii. Ep. 24, p. 568; l. ix. Ep. 20, p. 622; Ep. 34, p. 638; Conc. Greg. ib. pp. 814, 817. Cf. also Innoc. III. l. ii. Ep. 213, vi. 38; Migne, ccxiv. 772; ccxv. 43). Gregory was well aware that married priests, who were protected by the Council of Gangra, can. 4, formerly offered the Holy Sacrifice, especially in the East; but he had the strongest motives for executing his decree against clerical marriage with the support of the laity, whom for that reason he prohibited from unnecessarily hearing the Mass of 'presbyteri concubinarii' (1074, can. 4). By encouraging bad priests, and by disregarding the punishments which hung over them (can. 3), the people partook in their sin; and this *disobedience* was as the sin of idolatry (in the wider sense of the word); so too the blessing of a suspended or irregular priest, received in contempt of the Church's sentence, could not be productive of good. 'Non tam incontinentium, quam *pro incontinentia damnatorum* missas audire prohibuit,' says Bernold, Apolog. c. xix. p. 778; who also treats of the Conc. Gangr. c. 4.

§ 2.

What Gregory says of the personal holiness of Popes[1] refers not to himself, but to the many saints amongst his predecessors. It is drawn from the Roman Synod of Pope Symmachus,[2] and is supported by the example of numerous Popes who have become better and more zealous amidst the anxieties and labours of their pontificate.[3] As an instance, take Leo IX., whom Gregory knew personally, and who lived as Pope a life of great austerity, and became more and more holy during his pontificate.[4]

[1] Bossuet, l. i. sect. 1, c. xi. p. 107. Janus, p. 121.

[2] Bianchi, t. i. l. ii. § 10, n. 3, pp. 280-283.

[3] L. viii. Ep. 24: 'Ad Sedem Apostolicam rite ordinatos meritis B. Petri meliores effici et omnino sanctos.' But Ep. 21, ad Herm. is merely 'meliores.'

[4] Cf. Höfler, Deutsche Päpste, ii. p. 70 seq.

§ 3.

Gregory died in exile, and without having accomplished the work he had undertaken; but the words of Stephen of Halberstadt show us how to regard this seeming failure. 'Is it not,' he says, 'more blessed to die a good death than to live an evil life? Blessed are they that suffer persecution for justice' sake (Matt. v.

10). Was Nero blessed because he outlived the Apostles Peter and Paul; Herod, because he outlived St. James; or Pilate, because he outlived our Lord? Nothing of the kind; what more unblessed! The words of Wisdom (v. 1-9) are our mainstay: we may be contemned, sent into banishment, put to death; but not bent, not vanquished. We are proud of our fathers, who, despising the commands of princes, have earned an everlasting reward.'[1] Did he live in vain, strive in vain, suffer in vain, whose fame after death was so great, whose followers were so numerous, whose friends were the noblest of his contemporaries, such as Altmann of Passau, Gebhard of Salzburg, Bruno of Merseburg, Anselm of Canterbury, Anselm of Lucca, Paul Bernried, Berthold, Donizo, Hugo of Flavigny, Mathilda of Tuscany, and the Empress Agnes?[2] If we allow that this holy Pope was not entirely free from all human weakness, the truth remains that, with courage and determination, he fought a fight that was *necessary* to secure the liberty and rights of the Church.[3] The struggle was no doubt violent, but a struggle arising from the wisest laws, the most salutary institutions, the best-founded rights, is made violent by human passions; and it cannot be maintained that the *cause* of this civil war was really the opposition made by the Church to the shocking tyranny and vice then prevalent. To attribute the crimes and disorders consequent upon the great struggle to the Pope alone, and not also to Henry IV. and to the antipope, whose followers, in 1089, cruelly murdered Bishop Bonizo at Piacenza, and were guilty everywhere of acts of violence, is to disregard the first principles of justice. Gebhard of Salzburg and Hugo of Flavigny, as well as the assembly at Tribur in October 1076, attributed all the evils of the empire and the Church to King Henry and his assembly at Worms. It is by no means proved that Rome effected Henry V.'s desertion of his father, obstinate and excommunicated though he was.[4] Conrad, his elder and better brother, had left his father in 1093. This we know, that Henry V., in 1104-5, pretended that he required nothing of his father but the restoration of the peace of the Church and his reconciliation with the See of Rome; and sent deputies to

Paschal II., received absolution from the censures, and dispensation from the oath he had taken not to seize the government during the lifetime of his father.[5] This the Pope could all the better grant as he had long ceased to consider Henry IV. the lawful king. Henry V. was, however, equally false to his spiritual and to his natural father,[6] and his disposition was exactly like that of Henry IV., whose defective education and moral faults were repeated in his son. More than one of Gregory's successors had to suffer from them. But it cannot be said with truth that Gregory's conflict failed of obtaining the aim he had in view: he succeeded in his principal object of putting an end to investiture as practised under Henry IV., and of establishing the free election to Church offices, which had become a vital question.[7] His idea of delivering bishops and abbots from all feudal service was followed up by Urban II. and Paschal II., and was formally expressed for the first time at the Council of Clermont in 1096, and again, more emphatically, at the treaty of Sutri in 1111; but that was only a secondary, not a primary object. That the faith of nations was strengthened and the dignity of the priesthood enhanced; that greater purity was required from the clergy and more firmness from the bishops; that the Church was preserved from the danger of her offices becoming hereditary, and from the formation of a priestly caste; and that new religious societies, full of true zeal, arose,[8]—these were some results of Gregory's conflict, and truly they were not insignificant.

[1] Stephan. Halberst. Ep. ad Walram. (Migne, l.c. p. 1448).

[2] Vide the witnesses collected by Gretser in Migne, l.c. p. 199 seq. Godfrey of Vendôme, l. i. Ep. 7 (Migne, clvii. p. 457), quotes the 'veridica vox B. Gregorii, qui pro defensione fidei mortuus est in exilio.'

[3] Vide also Reumont, Gesch. der Stadt. Rom. ii. p. 366 seq.

[4] Abbot Hermann, in the Narratio restaur. Abbat. S. Martini, stands apart and far from the scene of action. Otbert, de Vita Henr. IV. and Otho of Freising, vii. 8, say that he was incited to it by the discontented nobles. Vide also Giesebrecht, Kaisergeschichte, iii. p. 702 seq.

[5] Pertz, v. 108. Stenzel, Gesch. der fränk. Kaiser, i. 580 seq. Döllinger, Lehrbuch, d. K.G. ii. pp. 155, 156. Hefele, Conc. Gesch. v. p. 250.

[6] Hildebert, Cenom. ii. Ep. 21: 'Quis enim potest praeter eum invenire,

qui patres suos, spiritualem scil. et carnalem, subdola ceperit factione. Iste est, qui praeceptis dominicis in utraque tabula contradicit.'

[7] Döllinger, l.c. ii. p. 143.

[8] Paul. Bernried, l.c. n. 108, p. 99.

§ 4.

The assertion that Gregory's measures had no lasting result of any importance is not proved, because shortly after his reign 'even' saints of the Church like St. Bernard and St. Hildegarde complain of the great corruption that everywhere prevailed, nor because the secular clergy, as well as the older and more recent orders, soon show a great falling off.[1] Ascetics and saints are precisely those who, in such a matter, would see most clearly and judge most severely. What would St. Bernard say of the world now? In what terms would St. Hildegarde condemn the tendencies of this age to rationalism and materialism? The moral and religious life of any age can only be judged relatively. Our opponents ought to show that the times after Gregory were not better than those before his pontificate, as St. Peter Damiani,[2] for instance, has depicted them; otherwise nothing is proved. The decline was chiefly local, and never simultaneous in all countries, provinces, orders, and societies. 'A special dispensation of Providence has ever prevented the whole Church from falling at once into lethargy. When this has prevailed in one part, the life of the rest has been all the more active, and has eventually revivified the stricken lands. In the seventh century the Irish Church, in the eighth the English Church, in the ninth the French Church, in the tenth and eleventh centuries the Church of Germany flourished most luxuriantly, and imparted life to the rest.'[3] At Clugny discipline, relaxed under Abbot Pontius, was restored by Peter the Venerable;[4] the Carthusians maintained for centuries the rigour of their order and the virtues of their founder;[5] but these, exercised in secret, were unknown to the world, whilst the crimes of the age were only too apparent. St. Bernard's worthy successors amongst the Cistercians were William of Thierry, Alanus ab Insulis, the Irish Archbishop Malachi, Archbishop Peter of Tarantaise; and the

order earned much praise from Alexander III.,[6] and worked most beneficially in France for a long time, and in north-east Germany with special success from 1198 to 1220.[7] We find at this period many distinguished abbots, for instance, Werner of St. Blaise (died 1126), Lietbert of St. Rufus near Valence (died before 1114);[8] and founders of orders, as St. Norbert, Archbishop of Magdeburg,[9] and others. A temporary decline should not surprise us; it is the fate of all human things.[10] Universities flourish and decay, States and societies have a period of splendour and a period of decadence, and each has many gradations. A learned Englishman, in the middle of the twelfth century, was of opinion that in every religious order there were persons who might compare with the saints of earlier times.[11] Chapters of monastic orders, Councils, and Papal decrees, did much at that time towards maintaining and renewing the pristine vigour of these congregations.[12] Should no attempt at reform be made because, if established, it may not be lasting? Holy men, who count it a gain to save one soul, would not thus reckon the cost of their labours.

[1] Huber, pp. 9, 10.

[2] Petr. Dam. l. iv. Ep. 9, ad Older. Ep. Firm. l. i. Ep. 15, ad Alex. II.; l. ii. Ep. 1, ad Card. Lib. Gomorrhian.

[3] Möhler's Kirchengeschichte, edited by Gams, ii. p. 203.

[4] Wilkens, Peter the Venerable († 1156), Leipzig, 1857.

[5] Petrus Vener. l. ii. Ep. 12, p. 201 seq.; de Miraculis, l. ii. c. xxviii. p. 943. Joh. Saresb. Polycr. l. vii. c. xxi. p. 691 seq.: 'Siquidem Carthusienses quasi avaritiae triumphatores praecipue ubique clarescunt.' Ib. c. xxiii. p. 698, he praises the orders of Grammont with the Carthusians. Peter of Blois, pupil of John, Ep. 62, p. 268 seq. also praises the Carthusians.

[6] Alex. III. 1165, Ep. 311, p. 336, ed. Migne: 'Inter ceteros religiosos causam Ecclesiae prudentius defenderunt et Catholicam foverunt magnanimiter unitatem et divinis etiam obsequiis noscuntur ferventius inhaerere.' On the monastery of Clairvaux, Ep. 324, p. 349: 'Quam famosum, quam celebre Claravallense monasterium habeatur et in quanta religione quantave hactenus honestate floruerit, non solum ad vicinorum, sed etiam ad longe positorum notitiam jam pervenit.' Cf. Joh. Saresb. l.c. c. xxi.: 'Cistercienses B. Benedicti . . . . praecepta et vestigia sectantur ad unguem.' Also Richard of Canterbury (Petrus Bles. Ep. 82, p. 252), Stephen of Tourney (Ep. 1), Philip, Abbot of Bonne Espérance (de Contin. Clericor. c. cxxv.), William of Malmesbury (l. iv. de Gest. Reg. Anglor.).

[7] M. H. d'Arbois de Jubainville, Etudes sur l'état intérieur des

Abbayes Cisterciennes, Paris, 1858. Fr. Winter, Die Cistercienser des nordöstlichen Deutschlands, Gotha, 1869.

[9] Migne, PP. Lat. t. clvii. pp. 719 seq. 711.

[9] Papebroch, Acta SS. t. i. Jun.

[10] Joh. Saresb. Polycr. Lc. c. xxi.

[11] Ibid. c. xxiii. p. 629. Cf. Petrus Bles. Ep. 97, p. 305.

[12] Cf. Gams in Möhler's Kirchengesch. ii. p. 608 seq.

§ 5.

Obviously I cannot now write a complete Church history; and it is useless to spend more time in making mere assertions. The whole of the twelfth century bears ample testimony to the rich results of St. Gregory VII.'s great struggle. Bitter complaints are raised in these days against the spirit of worldliness that then penetrated the whole Church; but those who make them are neither saints nor ascetics, and their right to complain may well be questioned. We may allow indeed that, in individual cases, the worldly spirit gained admittance, for it is an evil that in all times has had to be contended with. We may even allow that this spirit of worldliness in the Church contributed to the alienation of the Albigenses from Christian principles, although their external and ostensible connection with the East, the fascination always possessed by secret doctrines when artfully spread, and other causes, must not be forgotten; also that the religious condition of the south of France and north of Italy was different from that of any other part of Christendom. The 'Poor of Lyons' did, there is no doubt, originally intend to 'return to the simplicity of the Gospel;' but their view was a mistaken one, and their disobedience and self-assertion soon led them to follow the path traced by other sects. It is not untrue, though not the whole truth, that the great mendicant orders arose from a reaction, not against the Church, 'she having become rich and worldly,' but against the worldliness and luxury of her rulers and members. But, on the other hand, it is true that reform movements within the Church met with lively encouragement and support from the Holy See; that Popes always upheld and recommended voluntary poverty; and that Franciscans and Do-

minicans, even after their first fervour, performed great deeds in instructing the people, undertook most laborious missions to Africa, America, China, Tartary, and the north of Europe, and earned unending gratitude for civilising the nations. No followers of St. Francis were ever branded as heretics for following implicitly the rule of life enjoined by their founder—for the Paulists (Minims), Alcantarists, and Capuchins did this under the protection of the Holy See—but for disobediently preferring visionary fancies to Papal decisions, for being full of separatist pride, and for disseminating actual heresy. The Fraticelli were only a sickly outgrowth from the parent stem. Other complaints, of Rome being always in the foreground, and ecclesiastical order being suffered, in her interest, to fall into decay, are merely repetitions of the current Protestant objections, which have been outdone by *Janus*. We may reasonably ask what ecclesiastical order the Church possessed independent of Rome; an order perchance like that of the various 'Churches without the Papacy,' described with so much learning by Dr. Döllinger in 1861,[1] and which, in the circumstances of the Middle Ages, would have been a more chaotic and confused disorder than is well conceivable. We all agree that the 'revival of art and science in the thirteenth century,' the imposing display of the power of the Papacy in the Crusades and in the world-ruling policy of Innocent III.,'[2] would be no indemnification for the 'decay of the Christian life, to foster which is the Church's highest duty.' But this decay is far from being proved: it was not greater than in many former centuries, in which, taking them altogether, we might discover as many dark places. Consider the condition of the Frankish kingdom before and during the time of St. Boniface, the condition of Spain at the time of the Moorish invasion, and the disorders of the tenth century. In the Crusades the power of the Papacy was not manifested alone; chivalry was there in all its perfection, and religious enthusiasm in all its strength. The artists and scholars of the thirteenth century contributed as much to the religious life as to art and science, and were amongst the noblest characters that ever lived. The power of the Popes was equally a political necessity and

an instrument in the hands of Providence for planting, propagating, and protecting Christian civilisation.

[1] Kirche und Kirchen, p. 156 seq.
[2] Huber, p. 13.

§ 6.

In conclusion, we will venture to repeat the words of one of our most eminent theologians.[1] 'The great exertions of this age' (that of Gregory VII. and St. Anselm) 'had only one profound internal motive; to this unity of object they must all be referred, else they would all and each be without a real signification. But when this one and true spring of action manifested itself, it was under a multiplicity of forms, each of which laid hold of some special force or talent of the human mind; the fulness of time alone completely developed it: this whole, under its many forms, was religious enthusiasm, the renewed yearning after divine and eternal truths which had been so long stifled in the woes and melancholy errors of the time. The flame of religion struggled for freedom, and in the glow which it diffused the chains that bound the spirit were sundered. The liberty of individuals insures the liberty of the mass; for if the individual is, as he should be, truly an organic member of the body corporate, his fate is deeply and wondrously involved in the destiny of the whole. If the body corporate be a slave, the individual cannot be free; therefore the emancipation of the body corporate is the first necessity, whence arose the struggle for the liberties of the Church known as the struggle about investitures. The Church, purchased and redeemed by the blood of Christ, cannot be the handmaid of the State: this was the watchword of the time. It was no idle comparison, but one full of significance, that identified the freedom wherewith Christ has made us free with freedom from the despotism of the State. In the early days of the struggle Gregory openly took up the first position. To insure effective action, the members must share and participate in the operations of the head; or rather, as the desire of the whole is shown only in the centre, it follows that what showed itself in the head was found and manifested

in the members.' This is surely a more profound and more tenable view than those which prevail at the present day.

[1] Möhler's Kirchengesch. edited by Gams, vol. iii. p. 314 seq. Cf. Ges. Schriften und Aufsätze, i. p. 34 seq.

Note to page 37.

The passage at the end of § 4, p. 37, might mislead. Vigil's book is condemned as containing 'doctrinas et propositiones respective scandalosas, temerarias . . . impias et haereticas'—terms similar to those in which Quesnel's propositions are proscribed by the *Unigenitus*. But no one doubts that the *Unigenitus* is a 'dogmatic infallible decision.' Compare Pius IX.'s Brief *Eximiam tuam* (June 15, 1857) addressed to the Archbishop of Cologne on the obligatory force of the Pope's previous condemnation of Günther's writings. And see also Dr. Hergenröther himself when treating of the Syllabus. Part I. § 2, p. 207. [Tr.]

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A SERIES OF ESSAYS

ON THE

RELATION OF THE CHURCH TO THE CIVIL POWER.

TRANSLATED, WITH THE PERMISSION OF THE AUTHOR, FROM THE GERMAN

OF

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THE

Catholic Church and the Christian State.

ESSAY IX.

THE POPE AND THE HOLY ROMAN EMPIRE.

THE relation of the Pope towards the Holy Roman Empire has been interpreted in various ways, according to the views or prepossessions of the historian. If its origin be ignored, the empire is not seldom confused with the kingdom of Germany, and Popes are charged with having maintained immoderate pretensions against emperors. In the first part of this essay we propose to examine the Papacy and the Empire down to Frederick II.; in the second part, the struggle of Frederick II. with the Church; in the third part, the Empire until its fall.

PART I. THE PAPACY AND THE EMPIRE, FROM THE FOUNDATION OF THE EMPIRE TO FREDERICK II.

§ 1. The empire founded by the Pope. § 2. 3. Under the Carolingian kings. § 4. From Otho I. to Henry III. § 5. From Henry III. to Frederick I. § 6. Schemes of Frederick I. § 7. His conduct towards the Pope. § 8. His excommunication and reconciliation with the Church. § 9. Henry IV. § 10. Conflict between Philip of Swabia and Otho IV. § 11. Otho IV.

§ 1.

It is an historical fact that at Christmas, A.D. 800, Pope Leo III., in the person of Charles the Great, restored the Empire of the West, which included in the ideas of that time the protection

of the Church and the supreme guidance of Christian peoples in civil affairs.[1] The See of Rome had perhaps for some time contemplated this elevation of its powerful protector. Hadrian I. in 777 said that the world would at some future time see a new Constantine[2] in Charles the Great, and in 778 expressed the wish that God would make him victorious over all barbarous nations.[3] Still, Leo III. on the day of Charles' coronation was able, in the face of the whole world, to claim as his own act the emperor's elevation to the imperial dignity, for the defence and protection of the Church.[4] He acted in this matter as head of the Church; not, as many have pretended, merely as an instrument of Charles' policy. There is no historical foundation for such an assertion. He acted primarily as spiritual head of the Church, though he was at the same time civil head of the Romans. The Roman people, who could not have given a protector to the Universal Church, added to Charles' elevation those joyful acclamations which were a sign of its completion.[5] In later times it was universally acknowledged that only a prince anointed and crowned by the Pope could possess the full imperial dignity. Even in diplomas the dates of the empire and of the kingdom were put separate, and the former was often vacant when the latter was occupied.[6]

Unless Charles the Great had received the title of emperor from the Pope he must have conferred it on himself. At that time this could not well have been; it is supported by no historical witness, and is, on the contrary, disproved by Eginhard's testimony to the astonishment and reluctance with which Charles heard of the Pope's intention.[7] Neither did he receive it by right of conquest. He came to Rome in 800, not as a conqueror, but at the prayer of Leo III., to quell a rebellion. He came as protector of the Holy See, an office held by him as well as by his father and grandfather, in virtue of the patriarchate conferred upon them by the Popes. He did not owe his elevation to the conquest of Rome and Italy.[8]

[1] Cf. Niehnes, Gesch. des Verhältnisses zwischen Kaiserthum und Papstthum im M.A. Münster, 1863, vol. i. p. 588 seq.

[2] Ep. ad Carol. Mansi, Conc. xii. 819. Jaffé, Reg. n. 1854, p. 207.

[3] Mansi, l.c. p. 776. Jaffé, n. 1857, pp. 207, 208.

[4] Leo III. Diploma of the 25th Dec. 800. Jaffé, n. 1913, pp. 217, 218: 'Quem (Car.) auctore Deo in defensionem et provectum universalis S. Ecclesiae Augustum hodie sacravimus.'

[5] Natal. Alex. H. E. saec. 9 et 10, dissert. 2, t. vi. p. 397. Bianchi, t. ii. l. v. § 4, n. 1 seq. p. 178 seq. Mamachi, l.c. pp. 242, 243, nota 2. Cf. specially Otto Frising. de Gest. Frid. ii. 22.

[6] Eugen. Lombard. Regale Sacerdot. l. i. § 5, p. 148. Rigantius in Regul. Cancell. Apost. t. ii. p. 226, Reg. 17, n. 9. Muratori, Annali d' Italia, a. 1433, 1493, 1519. Bianchi, l.c. § 3, 4, pp. 164 seq. 177 seq. Phillips, K.R. iii. § 122 seq. p. 92 seq. Cf. also J. N. Neller, Dissert. de Rom. Imp. Idea, in Schmidt, Thes. jur. Eccles. t. iii. pp. 328 seq. 346.

[7] Einhard, Vita Caroli M. (Pertz, Scr. g. ii. 457, 458).

[8] Gosselin, P. ii. pp. 311, 312. Cf. Schrödl, Votum des Katholicismus.

§ 2.

Emperors themselves (for instance, Louis II. in his letter to Basil the Macedonian) have declared it to be beyond doubt that the dignity of emperor was conferred by the Pope's anointing and consecration.[1]

It is certain that in crowning Charles the Great emperor of the West, the Pope had no intention of conferring upon him an hereditary dignity, neither of relinquishing for the future his right of electing the most suitable protector for the Holy See. No historical witness confirms the supposition that the dignity conferred was hereditary; everything speaks to the contrary. No dispositions as to the imperial office were made in the deed of partition at Diedenhofen in 806,[2] although disputes might easily have arisen on this ground. The guardianship and defence of the Holy See were committed to Charles' three sons collectively, after the example of Charles Martel, Pipin, and their father. Italy is apportioned, but only 'to the boundary of St. Peter's territory.' Those who ascribe to the emperor the right of disposing of the imperial title[3] find it difficult to explain the silence concerning it. This is, however, easily understood when the rights of the Pope are given due weight.[4] Charles, no doubt, had associated his son Louis in the empire and called him emperor, but this must have been done with the Pope's consent.[5] The Pope approved also the partition treaty of 806.[6] Louis the Pious was crowned emperor in 816 by Pope Stephen IV. (V.).

Lothair I. informed his father Louis that he had received from Pope Paschal the blessings, dignity, and title of the imperial office (April 5, 823).[7] He would not have said this if the empire had been positively and irrevocably conferred upon him some years earlier, when his father associated him in the government; in fact, he only assumed the title after his coronation by the Pope.[8] Lothair's son, Louis II., was likewise anointed and crowned by Leo IV.[9]

[1] Baron. a. 871, n. 50 seq. Pertz, v. p. 521 seq. Some critics have expressed doubts concerning this letter, but for quite insufficient reasons. It throughout accords with the circumstances of the time. Cf. Annal. Moissiac. h.a. Anschar. Vita S. Willehadi ap. Mabill. saec. 3, O.S.B. P. ii. Chron. Ursperg. a. 800; Einhard, Ann.; Pertz, Scr. i. 189; Natal. Alex. saec. 9, diss. 1.

[2] Pertz, Leg. i. 141. Baluz. Capit. i. 437.

[3] De la Bruère, Hist. de Charlemagne, t. ii. p. 170.

[4] Gosselin, l.c. pp. 312-314.

[5] Ib. p. 319.

[6] Einhard, Ann. a. 806, p. 193. Jaffé, Reg. p. 218.

[7] Mabillon, Acta O.S.B. saec. 4, p. 513.

[8] Bianchi, l.c. § 5, n. 1-3, where also the hypotheses of Bossuet are refuted. Vide Defens. Decl. Cleri. Gall. P. i. l. ii. c. xxxvii. seq.

[9] Nicol. Ep. 26. Mansi, xv. 288. Jaffé, n. 2104, p. 247. Hefele, Conc. iv. p. 282 seq.

§ 3.

After the death of Louis II. Pope John VIII. elected Charles the Bald, in preference to Louis the German, and crowned him emperor in December 875. All that time the right of the Pope to confer the imperial crown upon whom he would was undoubted; it was acknowledged even by the Lombard nobles at the Synod of Pavia in 876.[1] After the death of Charles II. in 877 his nephew, Carloman of Bavaria, applied to the Pope for the imperial dignity,[2] but his ill-health was an impediment. John VIII. expressly declared: 'He who is by us anointed for the empire must first of all by us be called and chosen.'[3] Shortly afterwards, in 879, Charles the Fat was elected emperor,[4] and in 881 was anointed and crowned by the same Pope. During his residence in France, John VIII. had, on September 8, 878, crowned Louis the Stammerer king, but not emperor, as later we find him giving Louis only the latter title.[5] Stephen

V. (VI.), 21st February 891, conferred the imperial crown upon Duke Wido, or Guido, of Spoleto, who was only related on the female side to the family of Charles the Great; and his successor, Formosus, gave it to Guido's son Lambert on the 27th February 892.[6] But as Lambert disappointed the hopes of the Holy See, and afforded no protection, the Pope rejected him, and sent for Arnulf from Germany to raise him to the imperial throne.[7] In this first age of the renewed life of the Western Roman Empire we find descendants of Charles the Great, in France, Germany, and Italy, crowned as emperors by the Popes. Also Louis of Provence, son of Boso, received the empire from Benedict IV. in 901, and Berengarius in 916 from John X.[8] Where the Pope was not influenced by external force he disposed of it as he would.

[1] Mansi, l.c. pp. 303, 304, 308 seq. Hefele, iv. p. 495. It is said in the synodal decree confirmed at Pontion in June 875: 'Quia divina pietas vos beatorum principum Apostolorum Petri et Pauli interventione, per vicarium ipsorum, D. videl. Joannem, summum pontificem et universalem Papam, spiritualemque patrem vestrum, ad profectum S. Dei Ecclesiae nostrumque omnium invitavit et ad imperiale culmen Sancti Spiritus judicio provexit, nos unanimiter vos protectorem, dominum ac defensorem omnium nostrum eligimus.'

[2] Joh. Ep. 63, 68. Mansi, l.c. pp. 53, 57. Jaffé, n. 2342, 2347, p. 270.

[3] Joh. Ep. 135, ad Anspert. Mediol. p. 108. J. n. 2449, p. 278 seq.

[4] Joh. Ep. 160, 172, pp. 110, 111, 117. J. n. 2453, 2464, p. 279 seq.

[5] Joh. Ep. 125, 128, pp. 95, 97. J. n. 2422, 2421, p. 277. Sirmond. nota ap. Mansi, l.c. p. 358. Bianchi, l.c. § 5, n. 6. pp. 210, 211.

[6] Jaffé, pp. 298, 299.

[7] The rejection of Lambert can be gathered from (1) the oath sworn to Arnulf by the Romans (Luitpr. Hist. i. 8); (2) the hatred of the Italian party against Formosus even after his death; (3) the can. 6 of the Roman Synod of 898 (Hefele, iv. 543).

[8] Jaffé, pp. 306, 310. Bianchi, l.c. § 5, n. 4 seq. § 6, n. 1-3.

§ 4.

From 924 to 962 the empire of the West was vacant. The line of German Roman emperors begins, strictly speaking, with Otho I., who was crowned at Rome in 962.[1] During his own lifetime, on the 25th December 967, he obtained the empire for his son and namesake.[2] After the death of Otho II., A.D. 983, Otho III. was crowned king at Aix-la-Chapelle, but was not emperor till 996, when he was crowned by Gregory V.[3] The

diploma of Leo VIII., which ascribes to Otho the Great the right of appointing his successor (not primarily to the empire, but) to the kingdom of Italy would, as the work of an antipope, have no weight, even were it not as much a forgery[4] as the false privilege it cites of Hadrian I. in favour of Charles the Great.[5] Twelve years after the death of Otho III. St. Henry II. received the imperial crown, after having sworn allegiance to Benedict VIII. (14th February 1014).[6] Henry II. (as Emperor, Henry I.) had felt the need of being emperor. Conrad the Salic obtained this dignity more quickly[7] (26th March 1027); his son Henry III. (as Emperor, Henry II.)[8] was crowned at Rome by Clement II. on the 25th December 1046.[9] Henry obtained from Pope Victor II., who was much attached to him, that he should forbid Ferdinand, King of Castile, from continuing the title of emperor under pain of excommunication.[10] No one was surprised at this; and yet in the ancient Roman Empire powerful captains had taken the title, and it had met with acknowledgment. At his death (on the 5th October 1056) Henry placed his son under the protection of the Pope, to whom also he transferred the administration of the kingdom;[11] but before a twelvemonth had elapsed Victor had followed him into the grave (on the 28th July 1057). During its second period, from Otho I. to Henry III., the empire became too powerful, exercised great authority over appointments to the Papal See, as formerly had been done by the Italian nobles, to the injury of the Church. A reaction was imperative, for the vital interests of the Church were at stake. An arrangement useful during a period of danger and difficulty was not intended for all time. It was necessary that the Church should become more free and independent. She became so in the great struggle about investitures.

[1] Concerning the coronation of Otho I. we read: 'A Johanne P. amabiliter exceptus atque honore imperiali sublimatus est' (Flodoard. Ann. Rem. 962); 'Otto rex consecratione Johannis P. imperator Romae factus est' (Annal. Ottenburg. h.a.); 'Joh. P. (Ottonem) consecratione sua imperatorem fecit' (Lambert). Cf. Luitprand, vi. 6; Regin. Contin. a. 962.

[2] Reginon. Contin. a. 967. Annal. Hildes. h.a. Otto I. Ep. ap. Baron. a. 968, n. 7.

[3] Thietmar, Chron. l. iv. c. xviii. Annal. Quedlinburg. h.a. Cf. Phillips, K.R. iii. § 123, p. 122.

[4] C. 23, In Synodo, d. 63. Cf. Baron. Pag. ad a. 964; Berardi Gratiani, Can. Gen. ii. ii. p. 307; Bianchi, t. ii. l. v. § 6, n. 5 seq. p. 226 seq.; Phillips, l.c. p. 119; Floss, Die Papstwahl unter den Ottonen, Freib. 1858, p. 65 seq.

[5] C. 22, Hadrianus P. d. 63. Cf. Berardi, l.c. p. 187; Phillips, l.c. p. 150.

[6] Thietmar, Chron. (Pertz, v. 836). Jaffé, p. 352.

[7] Wippo, Vita Conradi ap. Pistor. Rer. g. Scr. iii. p. 472. Jaffé, p. 358.

[8] As the German King Henry I. was not emperor, Henry III. called himself Henricus Secundus, for instance at the Synod at Mainz of October 1049 (Jaffé, n. 3187, p. 370).

[9] Jaffé, p. 364.

[10] Baron. a. 1055, n. 23. Will, Victor II. als Papst und deutscher Reichsverweser, pp. 20, 55 seq.

[11] Petrus Damiani, l. i. Ep. 5; Greg. VII. Reg. l. i. Ep. 19. Will, l.c. pp. 48, 50 seq.

§ 5.

From the death of Henry III. (1056) to the enforced coronation of Henry V. by Paschal II. (1111) there was no lawful emperor.[1] Under Henry V. the same distinction was made between empire and kingdom, for example,[2] at the Concordat of Worms.[3] Lothair did not till the eighth year of his reign as king, on the 4th June 1133, receive the imperial crown from Innocent II.[4] His election as King of Germany, which according to custom gave a right to expect the dignity of emperor, had been confirmed by Honorius II.;[5] this must have been done with a view to his becoming emperor at some future time, as the election to the kingdom did not require Papal ratification. Lothair's successor, Conrad III., was never emperor, but was 'King of the Romans,' because he had the expectation of becoming emperor.[6] Only on a few occasions Conrad styled himself, and allowed others to style him, emperor.[7] He did not comply with the request the Romans made him as their king; on the contrary, he opened friendly negotiations with the Pope, at that time much oppressed by the mob leaders.[8] Frederick Barbarossa also rejected with scorn the pompous overtures of the republican Romans;[9] he desired to be crowned by the Pope, like other emperors, treated on the subject with Eugenius III., and was crowned by Hadrian IV. on the 18th July 1155.[10] Coronation by the Pope was never regarded as an empty ceremony; it was accounted an all-important

and most solemn act, conferring the supreme civil power and the authority of chief protector of Christendom.

[1] Henry V.'s father had only been crowned by the Antipope Guibert, Clement III., in 1084. Jaffé, Reg. p. 444.

[2] Jaffé, n. 5079, p. 540: 'Nihil Henrice, de jure tuo vindicare sibi quaerit Ecclesia; *nec regni nec imperii* gloriam affectamus; obtineat Ecclesia quod Christi est, habeat imperator, quod suum est; si nos audire volueris, cum temporalis *regni et imperii* fastigio etiam aeterni regni gloriam consequeris.'

[3] Hefele, Conc. v. p. 334. The regnum Teutonicum is quite different from the imperium, as is recognised by Gregory VII. in 1080 (l. viii. Ep. 9, Mansi, xx. 321; Jaffé, n. 3905, p. 436), by Paschal II. in 1105 and 1106 (Mansi, l.c. p. 1209; Jaffé, pp. 490, 492, n. 4515, 4540), by Innocent II. in 1130 (Jaffé, n. 5318, 5321, p. 561), by Eugenius III. in 1148, 1149 (J. n. 6403, 6469, pp. 632, 636), by Alexander III. (Ep. 30, p. 103; Ep. 192, p. 257, ed. Migne), and frequently elsewhere.

[4] Otto Fris. Chron. vii. 18; Suger, in Vita Ludov. vi.; Chron. Maur. a. 1133; Baron. h.a. n. 1-4; Jaffé, p. 571.

[5] Innocent II. on the 20th June 1130 writes to the German bishops (Jaffé, l.c. n. 5321): 'Praedecessor siquidem noster f. m. P. Honorius pro unitate Ecclesiae conservanda et statu imperii in melius reformando, quod a vobis de eo (Loth.) factum fuerit, *auctoritate apostolica confirmavit* ipsumque pro suscipienda imperialis dignitatis plenitudine .... ad Sedem Apostolicam evocavit.' Cf. Ep. ap. Mansi, xxi. 428; J. n. 5320.

[6] 'Rex Romanorum' he is styled by Eugenius III. in the letter of December 11, 1146, as well as in several later ones (J. n. 6273, 6305, 6333, 6343, pp. 624, 626, 628). 'Imperator' is found once, it may be through an error of the copyist or dictating clerk, or possibly because the coronation was shortly expected to take place (Jaffé, n. 6402, p. 632).

[7] Pag. a. 1138, n. 3; a. 1149, n. 1. Bianchi, l.c. § 7, n. 8. In the confirmation in 1138 of the privileges granted by Lothair to the monastery of Stablo, the words of the former privilege were repeated according to custom; but instead of 'imperialis sollicitudo' is put 'regia;' instead of 'imperium,' 'regnum.' Cf. the diploma in Migne, clxxxix. pp. 1467, 1471. Canute, King of Denmark, when seeking help from him, called him emperor, and looked upon it as his duty as 'pater justitiae filiusque pacis' to interfere on his behalf. In the same way the other pretender, Swen, placed himself under Conrad's protection.

[8] Otto Frising. de Gest. Frid. I. l. i. c. xxviii. Wibald, Ep. 211, 212.

[9] Otto Frising. l.c. ii. 21. Baron. a. 1155, n. 9 seq. Hefele, Conc. v. p. 475 seq.

[10] Otto Fris. l. ii. c. xxiii. Jaffé, p. 663.

[11] Card. de Arag. in Vita Hadr. Anon. Vat. ap. Baron. a. 1155. Thomassin, P. ii. l. iii. c. lxv. n. 4 seq.

[12] Ep. Conc. Papiens. (Pertz, Leg. ii. 126). Chron. Vinc. Prag. ap. Dobner, Mon. Hist. Boh. i. 68. Jaffé, p. 828.

§ 6.

In spite of Frederick's refusal to receive a democratic sovereignty from the favour of the Roman people, he was by no means disposed to submit to the views of the Pope and the Church concerning the imperial crown, as they had been understood since the time of Charles the Great. His was an imperious spirit, imbued with the notion of Roman law as expounded to him by the jurists of Bologna, especially at the diet held on the fields of Roncaglia (1158). His journey to the East, whither he had accompanied his uncle, Conrad III., had acquainted him with the absolute authority of the Greek emperor and the Saracen sultan. He desired, like a second Justinian, to be an absolute and independent ruler, and to reduce everything to submission to his sway—Pope, princes, and towns, especially the flourishing towns of Italy. He delighted in the phrases, 'I am lord of the world,' 'The will of the ruler is law.'[1] He intended to make the Pope serve his ambitious purpose of universal dominion, and attack with the spiritual sword what Frederick desired to seize with the material sword.[2] It was the same thing as Napoleon's demand on Pius VII.: 'My enemies must be also yours.'[3] Frederick disregarded the whole historical development of the Christian German Empire, and sought to restore the conditions and circumstances of the Roman Empire of old. But the universal feeling of the time was against this. Bishop Arnulf of Lisieux, in his speech at the opening of the Council at Tours[4] in 1163, only confirmed the words spoken by Cardinal Roland at Besançon in 1159, which were ill received at the time: 'From whom has the emperor received his empire (imperium) if not from the Pope?'[5] The biographer of St. Adalbert writes: 'Rome alone can make kings into emperors.'[6] This condition was at the root of the petition preferred by the Saxons to Gregory VII., as Bossuet has acknowledged.[7] It asserted itself in spite of the many efforts of the Hohenstaufens against it. It was confirmed in the fourteenth century by Ludolf of Bebenberg, one of the most esteemed of jurists;[8] also by many other writers.[9]

[1] L. ix. ff. xiv. 2; l. i. ff. i. 4. Radev. l.c. ii. 4.

[2] Joh. Sar. Ep. 59 (Migne, PP. Lat. cxcix. p. 39): 'Promittebat se

totius orbis reformaturum imperium et urbi subjiciendum orbem eventuque facili omnia subacturum, si ei ad hoc solius Romani Pontificis favor adesset. Id enim agebat, ut in quemcumque denunciatis inimicitiis materialem gladium imperator in eumdem Rom. Pontifex spiritualem gladium exerceret.'

[3] Letter of the 15th Feb. 1806. Artaud, Hist. de Pie VII. t. ii. c. xi. pp. 131-134.

[4] Mansi, xxi. 1167 seq. Hefele, v. 542.

[5] Radev. l. i. c. x.

[6] Vita S. Adalb. Prag. ap. Mabillon. saec. 5, O.S.B. Pertz. M. vi. 590.

[7] Bruno de Bello Saxon. et Vit. Henr. IV. ap. Urst. p. 382. Bossuet, l.c. l. i. sect. 1, c. xii. p. 109. Bossuet remarks on this passage, l. iv. c. ix. p. 352: 'Quae profecto ostendunt, his jam temporibus in Rom. Pontifice fuisse notatum peculiare aliquod jus ad constituendum eum regem, qui postea imperator futurus esset, atque ad eum postea deponendum.'

[8] De zelo principum Germ. c. 7 seq. ed. Argent. 1609.

[9] Anon. de potest. Papae ap. Richer, Vindic. doct. maj. schol. Paris. Colon. 1683, iv. p. 188; Joh. de Parisiis, de pot. reg. et pap. c. xv. xvi. p. 107, Bossuet, l.c. p. 354.

§ 7.

Frederick Barbarossa was already displeased with Hadrian IV. for the peace he had concluded with King William III., whereby Frederick was deprived of a pretext for making war on this prince, and thus of conquering Italy. His displeasure was fostered by a small party of ambitious cardinals, who were in close alliance with him. He also violated in many ways the Concordat of Worms, and did nothing for the release of the Archbishop of Lund, who had been taken prisoner in his dominions, although the Pope urged him to this duty. He wilfully misinterpreted Hadrian's complaints on this subject,[1] poured out volleys of invective against Rome, and asserted that he had received the kingdom and the empire direct from God through his election by the princes.[2] He endeavoured to gain the bishops of Germany to his side, and many of them wrote to the Pope from Frederick's point of view. His sovereign dignity appeared to him disparaged by an inscription on a painting in the church of the Lateran;[3] but later he owned himself satisfied with the Pope's explanation of the matter.[4] Their reconciliation was, however, not complete, and the Pope soon had further cause to complain of the emperor, for his arbitrary appointments to bishoprics, and also concerning the decrees of Roncaglia with

regard to the imperial rights of supremacy and the regalia, which were extended so widely. Frederick was ever on the watch for pretexts of complaint against the Pope; he neither listened to the Pope's demands nor gave admittance to his legates.[5] Contrary to custom and respectful observance, he placed his own name in his letters before the name of the Pope.[6] Hadrian IV. a few months before his death, on the 24th June 1159, sent him a solemn admonition,[7] and death alone prevented him from excommunicating the emperor.

[1] Radevic. de Gest. Frid. i. 9. Mansi, xxi. 789. Jaffé, n. 6991, p. 669.

[2] Radev. i. 10. Pertz, Leg. ii. 105.

[3] Radev. i. 15, 16. Würdtwein, Nova subsid. Diplom. xiii. 33. Bossuet, l.c. c. ix. p. 352.

[4] Radev. i. 22. Mansi, l.c. p. 793. J. n. 7036, p. 672. 'Hoc nomen,' the Pope wrote, 'ex bono et facto est editum et dicitur beneficium apud nos non feudum, sed bonum factum.' The words 'contulimus tibi insigne imperialis coronae' are equal to 'imposuimus coronam.' Even Frederick says of the Pope (Ep. ad Otton. Fris.), 'benedictionem coronae Romani Imperii super caput nostrum effudit,' and quite separates the 'prima unctio regni Teutonici' from the coronation as emperor. Otto of Freising, i. 22, says: '*Imperii* coronam accepit anno regni sui quarto.'

[5] Cf. Döllinger, Lehrbuch der K.G. ii. p. 173 seq. against Bossuet, t. i. l. iii. c. xviii. p. 312 seq. Vide Bianchi, t. ii. l. v. § 13, n. 6 seq. p. 344 seq.

[6] As early as 865 Nicholas I. blamed a King of Britain for doing this. Mansi, xv. 471. J. n. 2118, p. 248.

[7] 'Resipisce igitur, resipisce, tibi consulimus quia cum a nobis consecrationem et coronam merueris, dum inconcessa captas, ne concessa perdas tuae nobilitati timemus.' Mansi, xxi. 796. J. n. 7121, p. 677.

§ 8.

Pope Alexander II., elected by a majority of the cardinals, was opposed by Octavian as antipope under the name of Victor IV. Victor was supported by the powerful protection of the emperor, who found in him a willing instrument. In vain did Alexander's electors, whose right had thus been violated, admonish the emperor to return to his duty of protecting the Church.[1] In October 1159, Frederick convoked an 'Ecumenical Council' at Pavia, which was to settle the dispute; but he showed beforehand the bias of his decision by calling the antipope Bishop of Rome, and the lawfully elected Alexander only Cardinal Roland. It was impossible for Alexander III. to sub-

mit his just cause to an assembly held under the influence of the emperor. The Council, as Frederick intended, decided in favour of the antipope,[2] invested him with the ring, and clothed him in the Papal robes[3] (Feb. 1160). Alexander complained of Frederick's tyrannical proceedings in the States of the Church, of the illegal imprisonment of prelates returning to Rome, of the favour shown to the schismatic Octavian and his usurpation, and of the unjust decision of the Council of Pavia.[4] At the same time he spared no pains to effect the conversion of the emperor,[5] although after the Council at Pavia he excommunicated him, and, as the real cause of schism and devastator of the Church,[6] released his subjects from their oath of allegiance.[7]

Frederick continued to uphold the schism, persecuted the Pope in Italy so much that he was obliged to seek refuge in France, intrigued against him even there, ill-treated his followers in his dominions, and after the death of the first antipope elected successively two others. Strict Catholics no longer regarded Frederick Barbarossa as emperor,[8] and looked upon Alexander III. as the refuge of the liberties of the Church. The Pope's courageous firmness conquered at length. In November 1165 he returned to Italy, and continued to reside there. Frederick's reverses in the peninsula overthrew his military fame; and, humbled by misfortune, he renounced his schism at the peace of Venice in 1777, and was released from his excommunication. Alexander acted towards him at this time with so much moderation and magnanimity, that until his death, 30th August 1181, Frederick preserved for him esteem and friendship.[9] New discords, however, arose between Frederick and the successors of Alexander, owing to the outrages of Frederick and his son Henry against the liberty of the Church and the Papal States.[10]

[1] 'Qualiter ex imperialis officio dignitatis (S. R. Ecclesiam) protegere debeatis modis omnibus ac tueri.' Radev. ii. 23. Migne, PP. Lat. t. cc. p. 62.

[2] Hefele, Conc. v. p. 509 seq.

[3] Alex. III. Ep. 19 (Migne, l.c. p. 90; Jaffé, n. 7146, p. 681): 'Ceterum, ut praedictus imperator Ecclesiam Dei suae videretur subjugare et supponere ditioni et eam in supremam redigere servitutem, memorato Apostatico, sicut dictum est, pontificalia insignia reddidit et eum de papatu, quod est a saeculis inauditum, per annulum, prout dicitur, investivit. Sic enim reges et principes diversarum partium sibi intendit tum spirituali

tum materiali gladio subjugare, si in hac parte (quod absit) nefandissimum ejus propositum praevaleret.'

[4] Ep. 20, p. 91 seq. ed. Migne. J. n. 7147.

[5] Ep. 3, p. 73; Ep. 20, p. 90; Ep. 30, p. 101; Ep. 97, p. 169 seq.; Ep. 62, p. 133. J. n. 7188, p. 685. Alexander says: 'Quod si omnipotens Deus ei inspiraverit, quod ad sinum matris vellet Ecclesiae redire, nihil temporale nobis contingere posset in saeculo, quod acceptius et gratius haberemus.'

[6] Joh. Saresb. Ep. 185, p. 194: 'Quis similis erat Friderico in filiis hominum, antequam in tyrannum [he commonly calls him Teutonicus tyrannus, *e.g.* Ep. 292, ad Bald. p. 337] verteretur ex principe et ex Catholico imperatore *schismaticus et haereticus* fieret? Non dico, quod in articulis fidei, ne recte credatur, inducat errorem, sed quia in sinceritate ecclesiastici ordinis procedere non sinat veritatem. Ille sacerdotium scidit adversus Dominum et a Domino scissuram sentit imperii.'

[7] Card. Aragon. in Vita Alex. p. 451. J. p. 681. Joh. Saresb. Ep. 218, p. 242: 'Vicarius Petri a Domino constitutus super gentes et regna Italos et omnes, qui ei causa imperii et regni religione jurisjurandi tenebantur astricti, a fidelitate ejus absolvit.'

[8] Acta Alex. III. ap. Baron. a. 1170, n. 54; 1176, n. 15; 1177, n. 13. Joh. Saresb. Ep. 218, ad Subpr. Cant. p. 242. He generally calls Frederick 'ex-Augustus:' vide Ep. 228, ad Joh. Pictav. p. 259; Ep. 233, ad Nicol. de Monte, p. 262; Ep. 234, ad Bald. Archidiac. p. 263.

[9] Hefele, v. 617 seq. Soon after this Peter of Blois wrote to Cardinal William of Pavia, Ep. 48, p. 142, ed. Migne: 'Ille qui imperat ventis et mari, imperavit imperatori, qui cum nuper in Ecclesiam Dei efferata rabie desaeviret, hodie per gratiam Christi decrudescit in eo severitas et iracundia ejus mansuescit in gratiam. . . . Persecutor Ecclesiae factus est filius, de lupo factus est agnus, de hoste amicus, de superbo devotus.' He then describes the morals and the fall of the antipopes, p. 143: 'Ecce idolum Dagon, quod juxta arcum Domini fuerat elevatum prius, cecidit prostratum. Erectum secundo corruit, ex magna parte confractum. Erectum vero tertio tandem totum confractum inventum est et toto corpore dissipatum.'

[10] Mansi, xxii. 504, 506, 533 seq. Jaffé, n. 9828, 9947, 10,007-10,009, 10,151.

§ 9.

Henry VI., who was crowned emperor by Celestine III. April 15, 1191, was deeply implicated in the treacherous revenge taken by Leopold of Austria upon Richard Cœur de Lion on his return from the Holy Land, and Henry's conflict with the Holy See began on this account. In 1193, Celestine excommunicated Duke Leopold, and threatened to excommunicate the emperor if he did not release Richard, whose imprisonment was a violation of the law of nations, and who, as a Crusader, was under the protection of the Holy See. The king had to pay a large sum of money for his ransom; but on his return to England

wrote to the Pope, requesting him to command the restitution of the ransom money. This Celestine did, to Leopold and the emperor.[1] Henry wished to enter into negotiations concerning the indemnification, but he died in 1197, before the return of the bishops who were his envoys. Celestine forbade Christian burial to his remains as long as the ransom money was unreturned.[2] The tyranny of Henry's government had exasperated all parties. The oppressions and excesses of his officials had given Celestine much ground for complaint, and he always hoped for their removal. The meek old man endeavoured to soften him by fatherly admonitions.[3] Henry, by annexing the kingdom of Sicily, placed the Church in a very dangerous situation.

[1] Jaffé, p. 887. Hefele, v. 666.

[2] Roger de Hoveden, Annal. Angl. P. ii. a. 1191 seq. 1197. Matth. Paris. a. 1192, 1195. Baron. a. 1191, 1193 seq.

[3] Ep. d.d. 27 Apr. 1195. Jaffé, n. 10,526, p. 900 seq.

§ 10.

Upon Henry's death the majority of the German princes elected Duke Philip of Swabia, who was the brother of the late emperor. They passed over his son Frederick, to whom the inheritance had been promised, on the plea that Frederick was a child, and that the government of the kingdom required a man.[1] The votes of the minority were given to Otho of Brunswick, son of Henry the Lion. Otho signified his election to the Pope, and petitioned for the imperial crown. Pope Innocent III. had no desire to be engaged in the dispute, and hoped that the princes would arrive at an amicable arrangement.[2] When he saw that this hope was vain he wrote to the princes, requiring of them that concord which was of equal necessity to the empire and the Church; he also, at the same time, sent legates to Germany.[3] At length the time came for the Pope to decide in favour of one or other of the claimants. The points in Philip's favour were (1) the majority of votes; (2) his superior power; and (3) the intercession of the King of France. Against him were (1) the wrongs inflicted upon the Church by his father and brother; (2) his own hostilities against her dominions; (3) the excommunica-

tion inflicted on him on their account by Celestine III.; (4) the efforts of his family to obtain an hereditary right to the kingdom, as well as to the empire, which, according to the custom of many centuries, went together; (5) his coronation at Mayence by a foreign and unlawful prelate (the Archbishop of Tarantaise), which had preceded Otho's coronation by the proper prelate (the Archbishop of Cologne) in Aix-la-Chapelle, the customary place; (6) his perjury towards Frederick II. of Sicily. For these reasons Innocent acknowledged Otho as Emperor of the Holy Roman Empire on the 1st March 1201, and promised to crown him whenever he wished.[4] Many princes of Germany of Philip's party were offended at this, and complained that the Pope's legate, Cardinal Guido, if he had wished to act as an elector, had encroached on the privileges of the princes; and if he had wished to act as a judge, had violated the law in passing judgment in the absence of one party, and without having invited it to appear. Innocent replied circumstantially to this charge,[5] and declared that he and his legate fully acknowledged the right of the German princes to elect their *king*, but that if the elected king were to become *emperor*, it was the right of the Pope to examine his fitness for the office. This right was shown by (1) the coronation of Charles the Great by Leo III.;[6] (2) by the analogy of consecration, since the right of examining must belong to the consecrator; (3) from the absurd consequences of the contrary doctrine, by which a Pope might be forced to anoint and crown as protector of Christendom any tyrant, madman, heathen, or heretic.

The right of electing the emperor certainly had belonged to the Pope. If the princes now possessed it, they must have acquired it lawfully from its former possessors, the Popes.[7] The Popes make an accurate distinction:[8] the German princes have an undoubted right, confirmed by long usage, of electing *their king;* but that in electing their king they elect at the same time *the future emperor*, is only a privilege from the Holy See. The German king is called by the existing law King of the Romans, in view of his promotion to the dignity of emperor.[9] But it belongs to the Pope to decide upon the question of his

promotion; for as it is at the same time an ecclesiastical office, the Church must satisfy herself that the candidate actually possesses the requisite qualities. The Church could not at once promote an excommunicated person, such as Philip, to the supreme dignity; neither could she longer be deprived of a protector. The Pope was, therefore, obliged to decide in favour of Otho. With regard to the complaint concerning his legate, Innocent declared he was neither elector—for he in no manner effected the election of one or the other—nor judge—for he delivered no judgment; he was simply to report upon the two candidates, and in so doing had in no manner overstepped his powers. The Pope fully recognised the right of the electors to choose their king, and they must equally recognise his right to examine into the fitness of the candidate before consecrating him to the empire.[10]

In case of a disputed election to the German kingdom it would become the duty of the Pope (1) to admonish the princes to reëstablish concord; (2) if his admonition failed, to decide in favour of one of the claimants; and this that the Church might not longer remain without a protector.[11]

This is nothing but the consistent development of the distinction between the German kingdom and the empire, and in no manner prejudicial to the German kingdom, which could exist alone. Nothing but a complete misunderstanding of the historical and legal circumstances of the case could lead any one to see here an injustice.[12]

[1] Hefele, v. 675, 677 seq.

[2] Reg. de Negot. Imper. Ep. 1 seq. Migne, t. ccxvi. p. 995 seq.

[3] Cf. Innoc. III. l. i. Ep. 25 (Migne, t. ccxiv. p. 20).

[4] Reg. de Neg. Imp. Ep. 32 (Baluz. i. 702; Migne, l.c. p. 1036): 'Auctoritate Dei omnipotentis, nobis in B. Petro collata, te in *regem* recipimus, et *regalem* tibi praecipimus de caetero reverentiam et obedientiam exhiberi, praemissisque omnibus quae de jure sunt et consuetudine praemittenda, regiam magnificentiam ad suscipiendam *Romani imperii* coronam vocabimus et eam tibi dante Domino humilitatis nostrae manibus solemniter conferemus.' Cf. Ep. 33, p. 704 seq.; and the deliberation, Ep. 29, p. 1025 seq.

[5] Reg. Ep. 61, 62, p. 1063 seq. c. xxxiv. Venerabilem, i. 6, de Elect. Phillips's K.R. iii. § 127, p. 194 seq. Hefele, v. 695 seq.

[6] If the Pope speaks of a translation of the empire from the Greeks to

the Germans, this is only to be understood as meaning that Leo III. transferred to Charles that authority which extended from the East over the West, whence follows, of course, that Charles, after his coronation by the Pope, was preëminently protector of the Church. The expression 'translation' was long in use. Thus Otto of Freising says of the coronation of Charles the Great: 'Exhinc regnum Romanorum, quod a Constantino usque ad id tempus in urbe regia s. Cpli. fuit, ad Francos *derivatum* est' (Chron. v. 31). And of the coronation of Otho I.: 'Exhinc regnum Romanorum, quod post Francos et Longobardos ad Teutonicos vel ut aliis videtur, rursum ad Francos, unde quodammodo elapsum fuerat, *translatum* est.'

[7] Gosselin, ii. pp. 320, 321.

[8] This does not refer to the College of Electors, which did not exist at that time. The first traces of it appear after the election of William of Holland and Rudolph of Hapsburg. Phillips, p. 199 seq.

[9] 'Rex Romanorum in imperatorem promovendus.' The expression here employed by the Pope is found also in the golden Bull of Charles IV. of 1356, c. i. § 1, 2, and is used also by other Popes. S. Olenschläger, Erläuterung der goldenen Bulle Urk. p. 46. C. ii. § 1 of the Bull gives: 'Rex Romanorum futurusque Caesar.' We read in the Reg. Innoc. Ep. 15, p. 1010: 'Cum imperialis corona sit a Romano Pontifice concedenda, eo rite prius electo in principem et prius in regem legitime coronato, talem secundum antiquam et approbatam consuetudinem libenter ad coronam suscipiendam vocabimus.'

[10] Ep. 62, p. 1065: 'Jus principum nolumus nobis vindicare. . . . Sed et principes recognoscere debent et *utique recognoscunt, sicut itidem in nostra recognovere praesentia*, quod jus et auctoritas examinandi personam electam in regem et promovendam ad imperium ad nos spectat, qui eum inungimus, consecramus et coronamus.'

[11] Innocent recalls to mind Conrad III., who in 1127 made himself king in opposition to Lothair, but was obliged to submit when the latter was made emperor. Conrad had received the iron crown in June 1128 at Monza, from the Archbishop of Milan; but the See of Rome decided in favour of Lothair.

[12] Huber, p. 18.

§ 11.

We do not find that any serious attempt was made to confute the legal view taken by the Pope. Philip only sought to enter into fresh negotiations with Rome.[1] He employed many artful and cunning devices, and in 1207 was absolved from his excommunication.[2] After Philip's assassination in 1209,[3] Otho retained undisputed possession of the kingdom, and was crowned emperor by the Pope in 1209. But he was ungrateful to the Pope, to whose protection he himself acknowledged he owed almost everything.[4] He did not keep to his solemn oath,[5] and endeavoured to subjugate the whole of Italy, even including the

States of the Church, which he had repeatedly engaged to protect,[6] and Naples, the inheritance of the boy Frederick, who was under the guardianship and protection of the Pope. In consequence of all these misdeeds he drew upon himself the Papal excommunication in 1211.[7] A diet of princes held at Nuremberg pronounced his deposition. Otho was unable to resist the decree, and in 1212, Frederick, son of Henry VI. and the Pope's ward, received the crown of the kingdom of Germany.[8]

[1] Vide his detailed statement, Reg. Innoc. III. Ep. 136, 140, p. 1132 seq., and his Promissio, in Pertz, t. ii. Leg. p. 108; Migne, ccxvii. p. 295, Ep. 9.

[2] Hefele, v. p. 698 seq. 711 seq. Reg. Ep. 142, 143, p. 1142.

[3] Report of Cardinal Ugolino, Reg. Ep. 152, p. 1146.

[4] His letters in the Registr. Innoc. Ep. 19, 20, 53, 54, 81, 106, 160, 187, 189, 190, 193, pp. 1016 seq. 1054 seq. 1087 seq. 1108, 1150, 1157, 1169 seq. 1172.

[5] Reg. Inn. Ep. 77, 189, pp. 1084, 1169.

[6] Hefele, pp. 692, 720.

[7] Cf. Innoc. III. l. xiii. Ep. 210. Migne, t. ccxvi. p. 375; l. xiv. Ep. 78, 79, 101, pp. 439 seq. 465.

[8] His 'Promissio' of 1213 is in Pertz, Leg. ii. 224. Walter, Fontes Jur. Eccl. pp. 76-78.

Part II. Conflict of Frederick II. with the Church.

§ 1. His proceedings until the death of Honorius III. § 2. His excommunication. § 3. His pretended war against the Saracens. § 4. His 'peace' with them rejected by the Pope. § 5. Frederick's hypocrisy and contradictions. § 6. Peace of San Germano. § 7. Violation of treaties and conduct in Italy. § 8. Release from the oath of allegiance. § 9. Frederick's war against the Pope. § 10. The Council prevented. § 11. Louis IX. of France. § 12. Council of Lyons, 1245. § 13. Frederick's crimes. § 14. Election of an opposition king.

§ 1.

Frederick II. was solemnly crowned by the Archbishop of Mayence on the 25th July 1215, whilst the vanquished Otho wore away his days ingloriously on his paternal estates in Brunswick.[1] Frederick promised solemnly in 1216 that after receiving the imperial crown he would give up Sicily to his son as a kingdom separate from the kingdom of Germany. This was a matter of the first importance for the material safety of the See of Rome.[2] He also renewed all the promises made formerly by Otho IV.

But after the death of the great Pope Innocent III.,[3] Frederick showed himself as false as Otho, and nearly as despotic as his grandfather.[4] At his coronation by Honorius III. on the 22d Nov. 1220, he had again taken up the cross, as he had promised to do at Aix-la-Chapelle in 1215, and had vowed shortly to begin the campaign.[5] But it was not his real intention to execute his promise, and he sought constantly fresh reasons for postponement. When in 1219 Damietta, which the Crusaders had gained at so much cost, had to be given up again to the Sultan of Egypt, Honorius deeply grieved, reminded Frederick (19th November 1221) of his promise. The blame of the misfortunes of the Crusaders had already been attributed to the Pope, because he had not by means of the ban forced the emperor to fulfil his promises.[6] Frederick excused himself on the ground of the pressing necessities of his dominions, and again promised shortly to undertake the campaign. He renewed the promise in 1222[7] and 1223, when he once more vowed his willingness to enter upon the carefully prepared Crusade in less than two years.[8]

In spite of the serious nature of his grievances the Pope showed Frederick the greatest indulgence. Frederick already treated the subjects of the Pope as his own, oppressed the clergy in Sicily, and appeared unwilling to recognise the Papal right of confirmation of the nomination of bishops by the emperor.[9] The Pope hoped that Frederick's marriage with Iolantha, heiress of the kingdom of Jerusalem, would serve as a fresh motive to induce him to save that kingdom from its threatened subjection; but the emperor applied to his father-in-law to obtain for him a fresh postponement, because he feared an insurrection of the Lombards, who were, however, quieted by the intervention of the Pope. The Pope then despatched Cardinals Pelagius and Gualo of St. Martin with distinct proposals with regard to the repeatedly postponed expedition. At the treaty of San Germano (July 1225) Frederick undertook to furnish a certain supply of money, troops, and ships, and to engage in the Crusade within two years; he swore that if he had not fulfilled these engagements within the appointed time he should be excommunicated,

and that he himself and his dominions should, by a just judgment, be at the Pope's disposition.[10]

[1] Hefele, pp. 721, 724.

[2] Pertz, Leg. ii. 228 seq. Bréholles, Hist. Diplom. Frid. II. t. i. p. 469 seq. Rayn. a. 1215, n. 38: 'Ne forte pro eo, quod nos dignatione divina sumus ad imperii fastigium evocati, aliquid unionis *regnum* ad *imperium* quovis tempore putaretur habere, si nos simul *imperium tenceremus et regnum, per quod tam Apostolicae Sedi quam haeredibus nostris aliquod posset dispendium generari.*' Migne, ccxvii. p. 805, Ep. 19.

[3] His letters to Innocent, Pertz, Leg. ii. 223, 224. Migne, l.c. p. 310 seq. Ep. 16, 17.

[4] Cf. Hefele, Conc. v. p. 812 seq., who also exposes Schirrmacher's very partial explanation.

[5] Honor. Ep. ad Ep. Alban. Raynald. a. 1220, n. 53, 21 seq. Hefele, v. 811 seq.

[6] Raynald. a. 1221, n. 6, 18 seq. Cf. letters addressed to the Pope after the conquest of Damietta from the king and the Patriarch of Jerusalem, from the Grand Masters and other Crusaders (Petr. Bles. Ep. 195; Migne, ccvii. pp. 478, 479), as well as the Papal letters consequent thereon (ib. Ep. 196, pp. 479-481).

[7] Richard a. S. Germano, Chron. a. 1222. Honor. III. Ep. ad Pelag. ap. Rayn. a. 1222, n. 2, 4.

[8] Honor. Ep. ad Reg. Franc. Rayn. a. 1223, n. 4. Spondan. h.a. n. 1. Hefele, l.c. p. 819.

[9] Rayn. a. 1221, n. 32; 1222, n. 26 seq.; 1223, n. 15, 19. Huillard-Bréholles, Hist. Diplom. Frid. II. t. ii. pp. 139, 200, 239, 258, 272 seq. 431.

[10] Rayn. a. 1225, n. 1-7. Bianchi, t. ii. l. vi. § 4, n. 1, pp. 418-420. Döllinger, Lehrb. ii. p. 196 seq. Hefele, v. 819 seq.

§ 2.

When Honorius, towards whom Frederick had alternately shown himself hostile and friendly, died in March 1227, Cardinal Ugolino, who was very active in favour of the Crusades, and for whom Frederick had testified much esteem, was made Pope under the title of Gregory IX. He immediately entreated the emperor most pressingly to fulfil his promises,[1] admonished him fervently, and as Frederick still procrastinated,[2] threatened him with excommunication.[3] Through Frederick's fault a fine army of Crusaders, assembled in Lower Italy, melted away. The Landgrave Louis of Thuringia and some bishops died in the summer of a sickness that arose at that time; rumour reported that the landgrave had been poisoned by the emperor. Fre-

derick was pleased at the miscarriage of the enterprise, and, feigning illness, retired to the baths of Puzzuoli. Deeply grieved at the frustration of the hopes of Christendom, Gregory IX., on the 29th Sept. 1227, pronounced sentence of excommunication upon the faithless Frederick, who even on his own showing had deserved it long since.[4] He still wished, as Frederick at first endeavoured to excuse his conduct, to show him indulgence if he would only give proof of a serious conversion. The emperor's tyranny in Sicily, his leaning towards the Saracens, and his immoral life, for which Gregory had rebuked him on former occasions, had caused him to be the object of much mistrust, and had given ground for many complaints against him. Soon now too he published most malicious libels against the Church of Rome.[5] On the 23d March 1228, the Pope renewed his excommunication in a Synod held at Rome, as Frederick persisted in his obstinacy and committed fresh crimes (robbery of the Knights Templars and Hospitallers; for example, of Count Roger and others), and the places at which he sojourned were laid under an interdict.[6] Still no sentence of deposition was pronounced,[7] and the Christians in Palestine considered Frederick as an excommunicated person indeed, but not as having lost his authority.[8]

[1] Greg. IX. l. i. Ep. 2. Rayn. a. 1227, n. 18, 20 seq.

[2] Richard a. S. Germano, Chron. a. 1227. Vita Greg. IX. l. i. Ep. 165, ad Frid. Rayn. h.a. n. 14.

[3] Letters of 8th June 1227. Rayn. h.a. n. 21 seq. H. Bréholles, iii. p. 7 seq.

[4] The Encyclical of Oct. 10, which Böhmer declares to be a noble document, is given in part in Brischar Stolberg's K.G. vol. lii. p. 120 seq.

[5] Bréholles, iii. pp. 37 seq. 48 seq. Böhmer, Regesten, p. 138.

[6] Vita Greg. IX. Ep. ad Episc. Apul. Rayn. a. 1228, n. 2. Mansi, xxiii. 162. Hefele, p. 855 seq.

[7] Bossuet, Defens. P. i. l. i. sect. 2, c. xxix. p. 167; l. iv. c. vi. p. 347, with reference to Gregory's words: 'Imp. Fridericum excommunicatum, quamquam inviti, publice nunciamus et mandamus ab omnibus arctius evitari, contra ipsum, si contumacia ejus exegerit, gravius processuri.'

[8] Matth. Paris. a. 1228, pp. 349, 351. Bossuet, l.c.

§ 3.

The Frangipani, who were in league with the emperor, excited an insurrection in Rome against the Pope, which obliged him to

fly. Frederick, in mockery of the excommunication, entered upon a mimic war[1] against the Saracens with a paltry army, whilst he left behind him a strong force, amongst which were some Saracens, to make war upon the States of the Church. His conduct towards John of Ibelin at the island of Cyprus, his secret negotiations with the Saracens, the treaty he entered into with the Sultan Camel on the 19th February 1229, as well as all his measures in Palestine, were not calculated to place him before the world in a better light. Gregory, constrained to take up arms by the attack made by Duke Rainald upon the Papal States, assembled an army under John of Brienne, who drove back the duke and seized several Neapolitan towns.[2] In the mean time, Gregory IX. had, on the 30th August 1228, released all the inhabitants of the kingdom of both Sicilies from their oath of allegiance to Frederick;[3] he was justified in this as feudal sovereign of the kingdom on account of the felony of the vassal after the invasion of Rainald his lieutenant in July.[4]

[1] In this sense he expressed himself to the Saracens (Wilken, Gesch. der Kreuzzüge, vi. 420, n. 12.

[2] Richard, Chron. a. 1228. Greg. IX. Ep. ad Mediol. et ad Duc. Austr. Rayn. a. 1229, n. 2, 23. Jordan. ib. n. 31. Gerold. Hieros. ap. Matth. Paris. et Rayn. a. 1229, n. 3 seq. 15.

[3] Bréholles, iii. p. 494. Hefele, p. 857 seq. Bianchi, l.c. n. 4, pp. 425, 426, supposes that towards the end of the year 1228 Gregory had released all Frederick's subjects from their oath of allegiance.

[4] Bréholles, l.c. p. 75. Letter of the Pope of Aug. 5.

§ 4.

How can we regard it as otherwise than extremely disingenuous of Professor Huber[1] to place before his readers the entry of the Pope's army into Apulia, keeping absolute silence on the prior invasion of the Papal States by the army of Duke Rainald,[2] which had devastated and pillaged the country? What a history a Frenchman might make of the war of 1870 if he made similar omissions! Frederick himself acknowledged that Rainald was the aggressor in this instance, at the same time asserting that it had been done without his knowledge;[3] which is hard to believe, for no one dared to stir hand or foot in his

dominions without his permission.[4] That Frederick, whilst he was under excommunication, should have entered upon a Crusade was an act of rebellion and defiance of the Church, and he continually showed that these were his dispositions. The Pope could not absolve him from the excommunication as long as he manifested no repentance, but despised the Pope's censures, and flung to the winds his warning against fulfilling his vow before being reconciled to the Church.[5] It is not true that the Pope wished to nullify the results of Frederick's Crusade, for Frederick himself did not intend any results to ensue: he undertook the campaign with only a hundred knights, and had no single passage of arms with the Saracens; on the contrary, he entered into negotiations with them upon a most friendly footing,[6] and concluded by no means a 'favourable peace,' but only an armistice, which was injurious to the Christians,[7] and was condemned by the majority of his contemporaries.[8] Huber says that the Pope 'rejected the arrangement because it conceded the right of entering Solomon's temple to the Moslem;' whereas this reason, which is here misstated, was far from being the only one. For not merely admission to, but the custody (custodia) of, the temple (templum Domini) was granted to the Saracens; in consequence the Christians found themselves subject to many annoyances when visiting it. This templum Domini had been the cathedral of the Patriarch, and was now to serve for both the Mohammedan and Christian worship.[9] Patriarch Gerold had considered this a great injury to the Christians.[10] Then the Pope gives further reasons for his rejection of the treaty. These were, that Frederick had yielded to the Sultan of Babylon, as a mark of lasting friendship, the sword which had been taken from St. Peter's altar, thus, as it were, pledging the honour of the empire to undertake no further measures against the unbeliever; that, by the armistice, he exposed the town and district of Antioch, the territory of Tripoli, and other Christian possessions without protection to the unbeliever; finally, that he had bound himself by oath to resist by force of arms, at his own expense, any one who should oppose this treaty; thus placing himself in the position of an enemy to any Christian army which should

take the field for the liberation of the Holy Land.[11] All this was the more injurious to the Christians, by exposing them defenceless to the Sultan of Damascus, who was not a party to the treaty. Frederick eventually treated the Patriarch of Jerusalem as a prisoner, and suffered several mendicant friars who defended the Church to be torn from the pulpit and ill-treated.[12] The evil consequences soon manifested themselves. In 1230 Jerusalem, whose walls had not been rebuilt, was overrun by a horde of Saracen fanatics, who killed many Christians, and laid the place in waste. The defeat of Marshal Richard in the island of Cyprus was a death-blow to Frederick's authority in the East, A.D. 1232.[13]

[1] P. 28.

[2] For the authority conferred upon him in June 1228, vide Bréholles, t. iii. p. 63 seq.

[3] Thus Gregory IX. in the letter of 23d Oct. 1236. Bréholles, iv. 914 seq.

[4] Bréholles, v. p. 295 seq.

[5] Bréh. iii. p. 482.

[6] Matth. Paris, who was not inclined towards the See of Rome, says this also, p. 302: 'Conglutinata est anima imperatoris cum anima Soldani indissolubili cemento dilectionis,' &c.

[7] Natal. Alex. saec. 13 et 14, c. i. a. 3, p. 28: 'Exitiosum Christianae rei foedus.' Patriarch Gerold found in this 'principis hujus malitiam evidentem.'

[8] Vide the testimonies in Wilken, vi. p. 508 seq.

[9] Greg. IX. Ep. ad Aep. Mediol. 13 June 1229. Raynald. h.a. n. 2.

[10] Hefele, v. p. 863. Very damaging to Frederick are the reports of the Patriarch Gerold, in the letter of the 26th March 1229. Bréholles, iii. pp. 102-104.

[11] Bréholles, iii. p. 147 seq.

[12] Ib. p. 135 seq. Brischar, in Stolberg's K.G. vol. lii. p. 160 seq. Hefele, v. p. 865.

[13] Wilken, vi. pp. 512 seq. 526 seq.

§ 5.

Frederick, in a speech made at Jerusalem on the 17th March 1229, excuses the Pope for having excommunicated him, saying, 'that otherwise he (the Pope) could not have escaped the invectives and insults of men.'[1] These words contain almost as striking a justification of the Pope as it were possible to conceive, coming from one of his enemies; and also, as the utterance of a ruler who well knew the mind of his contemporaries,

make it incredible that 'the whole world was horrified at the Pope's conduct.' This, in reality, appeared not only justified, but called for, by what had gone before. It has become a principle with some 'that Gregory waged a war of extermination against the Hohenstaufen' (Huber, p. 27), and they trouble themselves little about these words of Frederick's, though at other times they consider the words of the emperor, without indeed the replies of the Pope, and the testimony of his adherents, without indeed the opposing testimonies, well worthy of attention and notice. The Italians knew much more of Frederick II. than the Germans did; for he passed far the larger portion of his time in Italy. The German bishops were on his side, because he conceded to them certain privileges, by which a great step was taken toward their future sovereignty,[2] the unity of the kingdom was impaired, and the splendour of the throne considerably diminished. Frederick's own letters were to many Germans the only sources of information on which they could form a judgment on his proceedings in Italy and Palestine. This was the case with the Provost of Auersperg,[3] who, like others, had been won by Frederick's bounty,[4] and who, with others, was at some distance from the theatre of the events related to them.[5] These letters of Frederick's were composed, for the most part, in his name by Petrus de Vineis, the same whom Frederick in after years suffered to perish miserably in a dungeon. They are said to place his 'sincerity' beyond doubt; whereas, in fact, they not only contradict other witnesses, but are convicted of falsehood by Frederick's own deeds, and show in themselves a mass of falsehoods, hypocrisy, and contradictions. He had, for instance, contrary to an engagement entered into by oath,[6] effected the union of the kingdoms of Germany and Sicily; when, in 1220, he suffered his son Henry, who had been made King of Sicily, to be elected also in Germany, he put everything off upon the princes, whom he had prepared beforehand,[7] and promised the further separation of both kingdoms, a promise which he was never willing to execute. He gave as his reason the maintenance of peace; but it is difficult to see how that could be attained by a boy still under age.[8] He had repeatedly expressed himself full of gratitud-

towards the Church of Rome,[9] which under Innocent and Honorius had done so much for him; but in 1226 he denied this,[10] then again admitted it,[11] and then on the 6th December he complained that always, even under Innocent, the Church of Rome had shown herself but a stepmother towards him.[12] Whilst he said at one time that he should long since have gone to the assistance of the Holy Land had not the Pope impeded the pacification of Lombardy; at another (1241) he blamed the Pope for not having averted the danger threatened by the Tartars, although he had spurned all the Pope's offers.[13] He excused the invasion of the Papal States, saying that it was to seek a paternal reception and apostolic counsel from the Pope before employing all his forces against the enemies of the Faith.[14]

[1] Letter of the Grand Master of the Teutonic Order, who was active on Frederick's side, and translated at the time his Italian speeches. Bréholles, iii. p. 100. Cf. Hefele, v. p. 862.

[2] Böhmer, Reg. Imp. p. 238, n. 237. Hefele, v. 880.

[3] Huber, p. 27 seq., gives his words leaving out his admission: 'Sicut idem imperator in epistolis suis rescripsit principibus Alemanniae.' On which Natal. Alex. l.c. p. 27, remarks: 'Partium studio horrendum in modum abreptum esse oportuit hunc auctorem, qui S. Pontifici tam insolenter insultat *nec aliunde* probat Friderici innocentiam quam *ex ipsiusmet literis*.'

[4] Bianchi, l.c. § 4, n. 8, pp. 434, 435. Pandolf. Cillenut. Hist. Neapol. l. iv. pp. 149, 158, follows the authority of the Provost of Auersperg and Matthew Paris.

[5] The reports of Salimbene of Parma (Chronicle of 1212-1287) and also of Richard of San Germano, who was a strong Ghibelline (Potthast, Bibl. Hist. Medii Aevi, Berol. 1862, p. 512), often have quite a different tenor.

[6] Huillard-Bréholles, i. 469 seq.

[7] Ibid. p. 803.

[8] Hefele, v. pp. 813-815.

[9] Bréholles, i. 636 seq. Rayn. a. 1220, n. 18. Walter, Fontes, p. 76.

[10] Bréh. ii. 588 seq. in the words of Frederick's there cited.

[11] Raynald. a. 1226, n. 23 seq.

[12] Bréh. iii. 36 seq. 48 seq.

[13] Hefele, v. p. 957, with note 3.

[14] Bréh. v. 1139 seq. Hefele, p. 958, No. 1.

§ 6.

It is quite a false assertion that the Pope, seeing the universal horror caused by his proceedings, was obliged at last to conclude a peace with Frederick. The latter feared a coalition between the followers of the Church and the enemies of his

house,[1] but the Pope had always declared himself willing to enter into negotiations for a reconciliation with Frederick if he would perform satisfaction and promise amendment. In June 1229, on his return to Italy, Frederick found it advisable to be reconciled to the Church. Finally, on the 23d June 1230, peace was concluded at San Germano. Frederick undertook to submit to the Church on all those points which had led to his excommunication; to make restitution of whatever he had robbed from the Roman or any other Church; to recall the exiled bishops; to grant an amnesty to those who had assisted the Church against him; to leave free the Church elections in Lower Italy; to indemnify all spoliations; to take all necessary precautions for the Holy Land. On this Frederick visited the Pope at Anagni, and in his letters to the princes praised his beneficent and noble demeanour, which had extinguished all his animosity.[2] Gregory also gave free expression to his joy over the reëstablished concord.[3]

[1] Stolberg-Brischar, l.c. p. 176 seq.
[2] Raynald. a. 1230, n. 3-16. Pertz, Mon. iv. Leg. ii. pp. 269-276.
[3] Raynald. h.a. n. 41 seq. Bréholles, l.c. p. 224 seq. Extract in Brischar, l.c. p. 180 seq.

§ 7.

But the perfidious Frederick broke this treaty, like so many others. Soon afterwards he allowed himself to be seduced by his councillors into persecuting those who had taken the Pope's part against him; he wished especially to be revenged upon the Knights of St. John and the Knights Templars, although these were expressly included in the treaty. He deprived them of their possessions, and continued his hostilities towards them until Gregory was obliged to remind him of the engagements he had entered into.[1] Whilst the Pope, in many ways, was assisting him in carrying out his schemes,[2] he issued, in 1231, his new code of laws[3] for the kingdom of Sicily, which encroached in many particulars upon the rights of the Church, and he took in very ill part the Pope's reclamations, upon which the Pope, for the sake of preserving peace, sought to appease him.[4] In the year 1232 the emperor condescended to approve of the inter-

vention of the Papal legate between him and the Lombards, because he had really no sufficient force; he did not, however, await the result: persecuted some Catholics whom he was displeased with because, he said, they were heretics, and allowed his Saracens at Lucera to pillage a church; he also chose to regard the Lombards, because there were amongst them some Cathari, as heretics, whom he said he must exterminate; and because the Pope had favoured them he reproached him with it, and called him 'favourer of heresy.'[5] He was displeased at the Pope's decision of the 5th June 1233, in the matter of his dispute with the Lombards; Gregory defended it (12th August), saying that it had been issued with the advice of the cardinals, and was in accordance with law and equity, but offered to retract it, and let everything revert to its former position.[6] Frederick would not agree to this, and gave his consent to the Pope's decision.[7]

Very different was the assistance which the Pope rendered to Frederick, when his son Henry, for the second time, rebelled against him,[8] from the lukewarm assistance Frederick had rendered to the Pope, on the occasion of a rebellion in Rome in 1234, when Frederick was in secret league with the Pope's enemies,[9] and the latter felt it his duty not to decline his help.[10] The situation would have been highly perilous for the emperor if the Pope had given his support to Henry, whose causes of quarrel were not wholly unreasonable, nor the means at his disposal insignificant; but Gregory threatened to excommunicate him, and gave such efficient help to Frederick that the latter succeeded at last in placing Henry in confinement, and kept him until his death in 1242 a close prisoner. Such was the end of Frederick's eldest son, who had been raised to be King of Germany in violation of the promise given to the Holy See.[11] Frederick in spite of this aid remained an implacable enemy of the Papacy, and never abandoned his scheme for subjugating the whole of Italy.[12] In the year 1236 he made vigorous war upon the Lombards, and rejected all intervention; in 1237 he was at the summit of his power, with strength sufficient to set at naught the supremacy of the Church and the feudal suzerainty. His replies to

the complaints of the Pope were sometimes evasive, sometimes insolent; so that Gregory, on the 23d October 1236, repeated all his grievances, at the same time representing to Frederick his position with regard to the Church, and reproving him for his want of respect.[13] Intoxicated by his victory over the Lombards at Cortenuova, 27th November 1237, the emperor drove them by his tyranny to the resistance of despair,[14] took every pretext for jeering at the Pope, and multiplied his outrages against the Church.[15] It was a source of much sorrow to the Pope that Frederick's officers in Sicily should, in 1236, have intercepted and imprisoned a nephew of the King of Tunis who had been converted by the Dominicans, and was travelling to Rome, there to receive baptism. Frederick, however, refused to set him at liberty, pretending that the prince had been unduly influenced, and that he could not become a Christian without the consent of his uncle.[16] Many other grievances were added to these, viz. that he had violated the treaty of San Germano, incited the Romans to rebellion against the Pope, ill-treated and banished several prelates; that he had put priests cruelly to death; that he prevented the filling up of vacant sees, had employed Saracens to destroy Christian churches; that he had rendered vain all endeavours to secure the Christian supremacy in the East; that he had conferred upon his natural son Enzio[17] the island of Sardinia, which he had himself acknowledged to belong to the Church of Rome; that he led a dissolute life, and was strongly suspected of heresy and unbelief.[18] With regard to the latter point the Pope reserved to himself a more searching investigation. The charge of unbelief was denied by Frederick,[19] as well as by his biographers; but the suspicion has always attached to him, since his whole course of action seemed to justify it. Over and above these grievances, he took prisoner Peter the Saracen, who was sent to the Pope on the part of Henry III. of England, and refused to permit Cardinal Palestrina, who was commissioned to Provence, to pass through his dominions on the way thither.[20]

[1] Raynald. a. 1230, n. 17; a. 1231, n. 2.
[2] Hefele, v. p. 880.

[3] This is treated in detail, of course exactly according to his point of view, by Pietro Giannone: Istoria Civile del Regno di Napoli, t. iv. l. xvi. c. viii. p. 48 seq. ed. 1821, Italia (place of publication not given).

[4] Raynald. a. 1231, n. 10 seq.

[5] Cf. Hefele, l.c. p. 833.

[6] Bréh. iv. p. 447 seq.

[7] Ib. p. 451 seq. Cf. Brischar, l.c. pp. 281-283.

[8] Hefele, p. 885.

[9] Raynald. a. 1234, n. 4 seq.

[10] Vita Greg. IX. p. 580: 'Imperator. . . . Reate concitus nec invitatus advenit, Ecclesiae causam, quam *ut advocatus ex imperii debito et vassallus ex homagio regni Siciliae* gemino tenebatur defendere juramento, cum supplicatione suscipiens D. Papae et fratribus de ipsius fide dubitantibus prosequendam. Fecerat enim eorum judicia futuri profectus incredula mentitae saepius offerentis fidei conjectura. Quod prudenter tandem summi praesulis cautela permisit, *eligens potius felicem deesse negotio successum, quam recusare debitum imperatoris ipsius obsequium, per quod, cum ex conditione regni et imperii teneatur, grave poterat Ecclesiae praejudicium generari.*'

[11] Bréh. iv. pp. 473 seq. 530 seq. Brischar in Stolberg's K.G. vol. lii. p. 340 seq.

[12] Sigon. de Regno Ital. Hist. i. 18, p. 180, ed. Venet. 1591. Döllinger, l.c. ii. p. 205.

[13] Bréh. iv. 906 seq. 914 seq. Brischar, l.c. pp. 378-394.

[14] Even Matthew Paris, who was so favourable to Frederick, remarks, p. 400: 'From this time forward the emperor lost the affection of many hearts, for he showed himself an implacable tyrant; whilst the Milanese, on account of their submissiveness, deserved to have been raised and strengthened.'

[15] Brischar, pp. 398-407. Hefele, v. p. 892 seq.

[16] Raynald. a. 1236, n. 22 seq.

[17] Raynald. a. 1238, n. 68.

[18] Various utterances of Frederick's are reported, whose contradictions are not surprising considering his sceptical tendencies. Even if the Book of the Three Impostors be not his work, everything makes it credible that he spoke like that book. Not merely Gregory IX. (Mansi, xxiii. 79 seq.) and his biography, but also the Chron. Augustan. a. 1245, ed. Freher, t. i., the Compilatio Chronol. ap. Pistor. Scr. g. i. p. 1102, a. 1249, have the same, as well as the Hist. Langrav. Thuring. c. l. ib. p. 1327. An utterance concerning the Eucharist is reported by Alberic. ap. Leibniz. Access. Hist. ii. 568; Pistor. Struve, in M. Chron. Belg. t. iii. p. 244. Cf. Bianchi, l.c. § 4, n. 7, pp. 432, 433; and Ricordano Malespini, Istor. Fiorent. c. cxxxii. (Murat. R. J. Scr. viii. 966). Arabian authors confirm the accusation (Reinaud, Extraits des Hist. Arabes relatif aux Guerres des Croisades, Paris, 1829, p. 431). The Journal Asiatique, Paris, Mars 1853, pp. 240-274, gives the questions laid by Frederick before the Mussulman doctors and the answers of Abu Muhammed Ibn Sabin. The words of Gregorovius, quoted by Huber, p. 35, really offer no counter testimony.

[19] Petrus de Vineis, lib. i. Ep. 31. Frederick in any case was obliged to

disavow unbelief before his contemporaries (Döllinger, Kirche und Kirchen, p. 52).

[2] Rayn. a. 1239, n. 6. Brcholles, v. 271 seq.

§ 8.

If after all this Gregory IX. did, on the 20th March 1239, renew Frederick's excommunication, and release his subjects from their oath of allegiance so long as he should be under the ban,[1] who could ascribe it to 'the immoderate claims of the Papacy, to motives of worldly policy, to blind passion,'[2] when the many and grievous crimes Frederick had committed, backed up as they were by his outrageous manifestoes,[3] are given their due weight? The excommunication was used as a measure of defence, in the Church's direst necessity, and as the fulfilment of an imperative duty. Frederick asserted, and his followers sought to gain credence for the idea,[4] that the Pope excommunicated him with a view of favouring the rebellious towns of Lombardy, and that the other reasons he gave were mere pretexts; but the facts of the case, as shown by the Pope, and which no one has ever contradicted, amply refute the assertion. Although the Lombards had been very negligent in support of the Pope, Gregory had, after peace had been concluded in 1230, shown himself full of consideration towards them,[5] but he could not vanquish their mistrust of a despotic ruler, which Frederick certainly fully justified. The emperor respected the Papal decision of 1233 just so long as he had need of the Pope; and new discords presently arose, which Gregory desired to adjust on the 25th July 1235.[6] Frederick, in reply, declared that if before Christmas the Pope had not arrived at an arrangement honourable to the emperor and advantageous to Germany, he should, in April of the following year, invade Lombardy simultaneously from two quarters.[7] Gregory, upon this, desired the Lombards to send their plenipotentiaries to him by the 1st of December, to lay their cause before the Church, otherwise they would have only themselves to thank for the evils which delay would bring upon them. He charged the Master of the Teutonic Order to prevail if possible upon the emperor to remove from his decrees the condition unfavourable to peace.[8] The

Lombards, having before their eyes the fear of such tyranny as that practised in Sicily, began by a renewal of their League,[9] which caused a delay in the arrival of their plenipotentiaries in Rome; in consequence of which the Master of the Teutonic Order, as envoy of the emperor, left the city and refused to return, even when messengers were sent after him announcing the arrival of the Lombard plenipotentiaries, and explaining the reason of their delay.[10] Frederick paid no attention to the request the Pope sent on the 21st March 1236,[11] that these same ambassadors might return without delay for the negotiations, although Gregory represented to him in what a bad light he would appear before the world, if without further parley he were to attack the Lombards; also that these might think they had been deceived by the Church. Gregory also wrote to many of the nobles who surrounded Frederick, and admonished the Lombards by the Bishop of Ascoli to effect a peace with the emperor.[12] Frederick, whose forces were well prepared, was dissatisfied with the peace concluded by his grandfather, and was bent on a war of subjugation, which he sought to cover with the pretence of making it a religious war for the extirpation of heresy.[13] Gregory's further letters, and the mission of Cardinal Palestrina, were of no avail.[14] As the Lombards had never refused to enter into negotiations, Gregory could not censure them, as Frederick wished him to do; subsequently the shocking acts of violence perpetrated by Frederick made all hope of peace impossible.

[1] 'Donec fuerit vinculo excommunicationis adstrictus' (Raynald. a. 1239, n. 15). Cf. Bréholles, t. v. p. 286 seq.
[2] Huber, p. 26.
[3] Bréholles, v. 295 seq. 307, 348 seq.
[4] In the letter to the cardinals of 10 March 1239, and in the Encyclical from Padua (Bréholles, v. pp. 282 seq. 307).
[5] Bréholles, iii. p. 244 seq.
[6] Bréh. iv. 490, 735 seq.
[7] Ib. p. 759 seq.
[8] Ib. pp. 479 seq. 776 seq.
[9] Bréholles, iv. 796 seq.
[10] Ib. p. 830, n. 5. Annal. Wormat. h.a. p. 165.
[11] Ib. pp. 870 seq. 904 seq. Vita Greg. p. 581.
[12] Ib. p. 827, n. 1.

[13] Ib. pp. 847 seq. 881 seq.
[14] Ib. pp. 870 seq. 904 seq. Vita Greg. p. 581.

§ 9.

Frederick took his stand on a despotic law of King Roger, a law revolting to all free men in the Middle Ages,[1] which declared it sacrilege to dispute the judgments, deeds, ordinances, counsels of a king, or the fitness of those chosen or appointed by him.[2] He even applied this law to the Pope, when Gregory declared a bishop appointed by Frederick to be unworthy of the office; and Gregory very justly complained of this.[3] Frederick asserted that the Pope had no power to excommunicate him. Gregory declared this to be heretical[4] according to the existing law, and on account of the denial of the spiritual power of the Holy See. Frederick wrote to the Romans inciting them against and insulting the Pope,[5] telling them that he had absolved the towns of the march of Ancona and of the duchy of Spoleto from their oath of allegiance to the Pope, as it was his intention permanently to separate these districts from the States of the Church.[6] His conduct was like that of Napoleon I. in 1806, and Victor Emmanuel in 1860 and 1870: especially the proclamations and letters of Napoleon show a striking likeness to the manifestoes and letters of Frederick II. Frederick mocked at the intercessory processions held in Rome by the Pope in his great need in 1240, as comedies played by boys and old women.[7] More than 100 Italian nobles were outlawed by him on the 13th June 1239, for having joined the cause of the Church,[8] and he persecuted religious orders and all followers of the Pope with the utmost cruelty.[9] Many German princes remained faithful to the Pope,[10] and in Italy Frederick found himself unable to take the towns either of Milan or Bologna; he was obliged to content himself with ravaging the surrounding country. Whilst besieging Ascoli, in the summer of 1240, he entered into an armistice which included the Lombards; he then besieged Faenza from the end of August of that year till April 1241; he was drawing nearer and nearer to Rome. Thus at the very time when the German Empire was being assailed by the Tartars, the

Christian emperor waged a furious war against the Head of the Church, and rejected all overtures of peace.[11] Whilst Frederick was assuring his followers in Germany, who were not at this time very numerous, that he was anxious for peace, and that he considered it imminent, in a confidential letter to his son Conrad he says that, in spite of the Pope's fair offers, he should bring the affair to an issue by the sword; that he should, with his great army, humble the pride of the high priest, and treat him in such a manner that in future *he would never venture to open his mouth against the emperor*.[12] Whilst Frederick himself acknowledges the Pope's desire for peace, Dr. Huber (p. 29) represents him as living and dying inexorable and unappeased. Shortly before his death Gregory sent Bartholomew of Trent to Frederick; but Frederick would not hear of repentance.[13] If the Pope had given him absolution without requiring satisfaction, it would have been contrary to all the rules of the Church,[14] and would have disgraced Gregory in the eyes of his contemporaries and of posterity. There was more than worldly policy to be considered; the situation was one that involved the whole position of the Church. There is no difficulty in comprehending the reason of the Pope's order to his legate in Hungary that the Crusaders should fight against Frederick instead of in Palestine,[15] since if the Holy See should be permanently deprived of power and liberty by Frederick, the cause of the Holy Land would be hopeless.

[1] Joh. Sarisb. Polycr. l. vii. c. xx. p. 688 seq., nearly a hundred years previously depicts the servile fawning ecclesiastics, slaves of tyrannical princes, and together with Barbarossa's favourite words places these in their mouth: 'Sacrilegii instar est dubitare, an is dignus sit, quem princeps elegerit.' He shows how these tyrants made their servants into bishops, who indulged them in every way and counselled them to evil; whilst courageous champions of truth appeared to them as enemies of princes. He says of such princes, p. 691: 'Hi, qui divinam evacuare nituntur, ut suam statuant auctoritatem, sine liberis moriuntur aut eos relinquunt degeneres et ignavos. Procul dubio quisquis ecclesiasticam deprimit libertatem, aut punitur in se aut punitur in sobole. Amittunt ergo filii etiam propria, cum his quae favore eorum paterna impietas occupavit.' This was fulfilled in Frederick II.

[2] Bréholles, iv. 9.

[3] Ib. 914 seq.

[4] Ib. v. 339, 340.
[5] Ib. iv. 901 seq.
[6] Hefele, v. 950.
[7] Bréh. v. 840 seq.
[8] Ib. p. 318 seq.
[9] Ib. pp. 343 seq. 435, 785, 866, 903. Giov. Villani, Chron. Flor. l. vi. Flav. Biondo, ii. Dec. 7. S. Antonin. Sum. Hist. tit. 19, c. vi.
[10] Hefele, v. p. 948.
[11] Hefele, v. 957, 952, 953.
[12] Bréholles, v. 1003, 1005, 1007.
[13] Hefele, v. 958.
[14] Cf. the passages from the Fathers in Gratian, c. xxxiii. q. 3, and Joh. Saresb. Ep. 219, ad Alex. III. p. 244. Polycr. l. v. c. v. p. 548.
[15] Hefele, v. 956.

§ 10.

On the 9th August 1240, Gregory, in the hope of obtaining peace, complied with Frederick's demand of the preceding year,[1] and summoned a General Council for Easter 1241;[2] but Frederick, who had nothing personally to hope from it, hindered its assembling with all the authority and means of intimidation at his disposal. On the 3d May he caused the prelates travelling to Rome to be made prisoners with great violence,[3] that is, more than a hundred bishops and delegates, the deputies from Lombardy, and three cardinals, Bishop Jacob Pecorara of Palestrina (who to avoid Frederick's snares had travelled in the dress of a pilgrim to Genoa, and from there to France,[4] and was returning by Genoa), Otho of St. Nicholas, and Gregory of Romania. The emperor boasted of this crime, and for a long time did not release the prisoners.[5] When, on the 21st August 1241, the heart of the magnanimous and aged Pope broke with all the misery he had endured, Frederick informed the princes of his death in coarse terms that befitted neither a knight nor an emperor.[6] After the death of the Pope, whilst the Holy See was still vacant, he devastated the States of the Church,[7] as if to show more and more that the Pope was justified in his conduct, and to prove that the true object of his attack was not so much the person of Gregory IX. as the Holy See. Frederick's deeds and his letters are Gregory's noblest apology. The Gallicans[8] —for instance, Natalis Alexander—avowed this, and it is only questioned by some professors of our day, no true Catholics.

[1] Bréholles, v. p. 301 seq.
[2] Spondan. a. 1241, n. 1.
[3] Bréh. v. 1112 seq. 1118 seq.
[4] Richard a S. Germ. a. 1239. Rayn. h.a. n. 38.
[5] Richard a S. Germ. a. 1241. Matth. Paris, l.c. Spond. a. 1241, n. 11. Bianchi, l.c. n. 9, pp. 436, 437.
[6] Bréh. v. p. 1165 seq. Hefele, p. 963.
[7] Hefele, pp. 964, 965.
[8] Natal. Alex. H. E. saec. 13 et 14, c. i. a. 3: 'Concilium, cujus sententia se exutum iri imperio praevidebat Fridericus, celebrandum prohibere studuit, minis deterrens episcopos a Romano itinere. Per Gregorium non stetit, quin sacerdotium inter et imperium pax iniretur, si Fr. arma feritatemque deponere et Ecclesiae satisfacere voluisset. Tartarorum enim in Ungariam irruptio illataque Belae Ungariae et Colomano Ruthenorum regibus clades pontificium pectus urgebat ad pacem optandam offerendamque perduelli adversus eam imperatori, ut deinde ad propulsandos Tartaros omnium arma verterentur. Id constat ex Ep. Greg. IX. ad Carinthiae ducem et ad Belam regem Ungariae 91 et 108, l. xv. At pacem Frid. recusavit, rebus secundis insolens et Romae totiusque Italiae dominationi inhians.'

§ 11.

These professors appeal to St. Louis, King of France, who they say supported Frederick's cause, and showed himself wholly in his favour. Let us look at the facts. On the 10th May 1232, at a time when Frederick was at peace with the Church, Louis IX. entered into a friendly league with the emperor at Pordenone, when each pledged himself to join no enterprise injurious to the other or his heirs in life or honour, to assist the other against his enemies, and permit no war to be made upon him.[1] The more jealous and passionate Frederick was, the more care did the chivalrous and generous Louis take to avoid giving him any offence, and to set his actions before him in a pleasing light; his letters to the emperor always breathe a deep piety. In 1236, Frederick complained to Louis of the partiality shown by the Pope to his prejudice in favour of the Lombard rebels, and insisted that the interests of all sovereigns required the subjection of rebels such as these.[2] Thus he spread distrust of the Pope, and succeeded in gaining credit in France by his vehement protestations of innocence. Moreover, we only know what the English chronicler Matthew Paris tell us; but he has been shown to be untrustworthy,[3] and good critics say that his

chronicles ' are so full of gross errors, that except when supported by contemporaneous testimony or documentary evidence they have been long recognised as unworthy of any, or of any but the slightest, credence;'[4] moreover, not a few of the documents he brings forward are suspicious. Therefore the only testimonies we have are such as criticism must take exception to.

It is very questionable whether Gregory IX. actually had the intention which Matthew Paris ascribes to him of conferring the empire upon Prince Robert of France, brother of King Louis; no other trace of such an intention is to be found. If it be true that the French refused the Pope any support against Frederick, how comes it that the same author tells of the return from France of the Cardinal-legate Jacob with so considerable a sum of money that it sufficed to pay the expenses of the war?[5] If the French nobles (or Louis himself) said that the emperor had no superior or equal,[6] how could the French ambassadors, in the face of the imperious Frederick, have declared that their king was higher than any emperor constituted merely by election?[7] If, subsequently, Gregory entered into fresh negotiations with Frederick, how could he have declared that Frederick's well-known crimes had condemned him so utterly and irrecoverably that he could never be reinstated?[8] How can it be asserted with even a shadow of foundation that the Pope, on receiving the money from France, commissioned Cardinal Colonna to put an end to the truce which had been concluded on account of the Council, when it is established that such a truce never existed at all?[9] How could it be said in letters from the French nobles that Frederick had never comported himself in a hostile manner against France, when we are told elsewhere of his hostile schemes in the year 1238?[10] But even supposing that we could unreservedly accept these letters as genuine, they prove only that the French nobles (not the king) declare that *it appeared to them* that Frederick was innocent; they had observed nothing wrong in him; they would send ambassadors to him, who should investigate the state of his mind with regard to the Catholic faith (an inquiry likely to be frustrated by Frederick's talent for hypocrisy). Should they discover that he was in bad disposi-

tions, they as well as the Pope would persecute him even unto death.[11] If he had merited deposition they thought that the sentence should be delivered against him only by a General Council.[12] The reason of this was that it might be quite clear that the decision was an impartial one, and properly conducted, as the Pope was suspected of partiality.[13] If these letters are genuine, they are certainly a weapon for those who hold that princes can be deposed by the Church on account of heresy.[14] It is certain that later Louis modified very much his favourable opinion of Frederick, when he learnt his violent conduct towards the bishops on their way to the Council, amongst whom were many French. He repeatedly wrote to Frederick on the subject,[15] at last with threats,[16] till he had obtained their release.[17] Frederick yielded to save appearances, while he still kept Cardinals Jacob and Otho in confinement,[18] and after the death of Celestine IV. impeded the election of his successor. If the letters of Louis on this subject are genuine,[19] he was convinced of the guilt of Frederick, from whom the cardinals were entitled and bound to demand the security of the conclave and the release of their imprisoned colleagues.[20]

[1] Bréholles, iv. 353 seq. Pertz, Leg. ii. 293.

[2] Bréh. iv. 873 seq.

[3] Raynald. a. 1213, n. 71; a. 1239, n. 39; a. 1254, 71, 72. Spondan. h.a. n. 13. Natal. Alex. H. E. saec. 13 et 14, c. iv. a. 3, n. 4, t. xv. p. 250, ed. Bing. 1789. Aub. Miraeus, Auctor. de Script. Eccl. c. cccciii. Oudin. Com. de Script. Eccl. t. iii. saec. 13, a. 1240, p. 200 (al. p. 530): 'Omnes secat, universos pungit, ac si nulli mortalium aut parcere aut condonare rigidissime sibi proposuisset.' Cf. Baron. a. 996, n. 54; a. 1197, n. 17.

[4] Thus Döllinger, Lehrbuch d. K.G. (1843), ii. p. 219, No. 1. Cf. Potthast (l.c. p. 438 seq.): 'It is proved that three writers are hidden under the name of Matthew Paris: Roger of Wendover, who is the most trustworthy, the continuator William Rishanger, and standing in time between them Paris himself, who in many details cannot be absolved from the reproach of *premeditated inventions* and of a love of *anecdote*, very dangerous to historical truth.' Wattenbach (Deutschlands Gesch. Quellen, Berlin, 1858, p. 420) observes: 'Matthew Paris was very prone to sharp judgments and unsparing reprobation; he attacks no one more severely than the Holy See whilst glorifying Frederick II.'

[5] Matth. Paris, ad a. 1240.

[6] Tantum principem, quo non est major, imo nec par inter Christianos.

[7] Credimus enim D. nostrum regem Galliae, quem linea regii sangui-

nis provexit ad sceptra Francorum regenda, excellentiorem esse aliquo imperatore, quem sola electio provehit voluntaria.

[8] 'Scelera enim praedicti Friderici multiplicia, sicut jam novit mundus, eundem *irrestaurabiliter* condemnarunt.' This mode of expression is altogether exceptional.

[9] Cf. also Raynald. a. 1240, n. 52 seq.; Spond. a. 1240, 1241.

[10] Guillelm. de Nangisco Chron. a. 1238: 'Quemadmodum malitiosus et seductor aliquid satagebat in regem et regnum Franciae machinari.'

[11] Matth. Paris, a. 1239: 'Et si nil nisi sanum invenerint, cur infestandus est? Sin autem, et ipsum, imo etiam ipsum Papam, si male de Deo senserit, usque ad internecionem persequemur.'

[12] Ib. 'Si (Frid.) ab apice imperiali meritis suis exigentibus deponendus esset, nonnisi per Concilium generale cassandus judicaretur.'

[13] Bossuet, l.c. p. 348, believes this answer to have been one reason for convoking the Council.

[14] Cf. Gosselin, ii. p. 109.

[15] Bréholles, vi. 18, 59 seq. Rayn. 1242, n. 5.

[16] Regnum Franciae non est adeo debilitatum viribus, quod se vestris permittat calcaribus perurgeri.

[17] Guill. de Nang. a. 1240; Nicol. Giles, Annales de France, a. 1240. Frederick was not absolutely deprived of the empire, and could still be treated as emperor. The letters in De Vineis, i. 12, 13, some think have been altered (Bianchi, l.c. n. 14, pp. 445-448).

[18] According to Matth. Paris, he liberated them for the election of the new Pope, stipulating that they should afterwards return into captivity. But Richard of S. Germano and others say this was not the case, and in April 1242 they were still not at liberty.

[19] Bréholles, vi. pp. 68, 70. Böhmer, Regesten, p. 352, doubts their authenticity. Cf. Hefele, v. 965.

[20] Bréholles, vi. 204.

§ 12.

At length, on the 25th June 1243, Cardinal Sinibald Fiesco was elected at Anagni, under the title of Innocent IV. He immediately sent plenipotentiaries with the fairest proposals to Frederick, with whom he had once been on terms of friendship. His principal appeal was for the release of the captive prelates, promising to take this as a special token of his willingness to be reconciled to the Church. He left it to the emperor to arrange what he would do as satisfaction on his release from the excommunication, and declared himself ready to repair any wrong that he could prove had been done him by the Church. The decision on the matter was to be intrusted to a large assembly of civil and spiritual princes, and all adherents of the Church were to be included in the peace.[1] Frederick did not

entertain those proposals, but alleged a host of grievances, which Innocent in a letter (26th August) to his plenipotentiaries discussed in detail. During the negotiations Frederick continued his hostilities, laid siege to Viterbo, and alleged as a fresh grievance against the Pope that some of his followers had been robbed and maltreated; although he was obliged to confess that not only were the Pope and his legate, the Cardinal-deacon Otho,[2] quite innocent of the affair, but that the latter had interfered to prevent the crime at some risk to his own life. However, when the falling off from his cause had become more universal, he entered into fresh negotiations at the end of the year 1243. Finally, on the 31st March 1244, peace was solemnly sworn to at Rome by Frederick's representatives.[3] But Frederick interpreted it differently from the Pope,[4] excited disturbances in Rome by means of the Frangipani,[5] and refused to give up the occupied territory or to release the prisoners until he had received absolution.[6] He must have known that could not be done, and that to ask it was an insult to the rules of the Church. The whole proceeding was only another added to the long list of his deceptions of the Holy See.[7] Innocent sent Cardinal Otho to the proposed conference at Narni, for he had been warned of Frederick's knavery; he himself fled from Sutri through Genoa to Lyons, where, on the 3d January 1245, he convened a General Council to be held on the Feast of St. John, which was to compose the dispute between Frederick and the Church. Frederick was invited to appear personally, or by plenipotentiaries.[8] Only after fruitless negotiations and fresh postponements,[9] Innocent took the measure of pronouncing sentence at Lyons. Dr. Huber is silent on all these preliminaries; he only says (p. 29): 'Innocent IV. immediately (!) renewed at the Council of Lyons the sentence of excommunication and deposition.'

[1] Raynald. a. 1243, n. 14. Bréholles, vi. 112.

[2] Hefele, v. p. 966 seq.

[3] Raynald. a. 1244, n. 16 seq. Bréholles, l.c. p. 168 seq.

[4] Frederick says this in the memorial of the summer of 1244. Bréholles, l.c. p. 203 seq.

[5] Bréholles, l.c. pp. 183-188.

[6] Frederick's memorial, just mentioned, shows this. Cf. Döllinger, Lehrbuch, ii. p. 237 seq.

[7] Phillips, K.R. iii. § 128, p. 129 seq.

[8] Mansi, xxiii. 608 seq. Rayn. a 1245, n. 1.

[9] Bréholles, vi. 222, 282. Hefele, v. 972, 988 seq.

§ 13.

The crimes Frederick was charged with, and which his advocate Thaddeus of Suessa was unable to argue away, were almost the same as those which occasioned the loss of the empire to his predecessor in the purple, Otho IV.;[1] namely (1) many perjuries; (2) sacrileges, especially with regard to the imprisoned prelates; (3) unbelief, and intercourse with Saracen women and Saracens; (4) his tyrannical government in the kingdom of Sicily, with violation of all feudal duties, retaining the feudal tax, obliging vassals to fight against their lord paramount. His crimes even exceeded those of Otho, whose deposition Frederick had acknowledged to be a righteous act.[2] In the same way Rudolph of Hapsburg recognised later that Frederick's deposition was lawful, when he only confirmed the privileges conferred by him before the Pope's sentence of deposition and excommunication.[3]

[1] Richard a S. Germano, Chron. Murat. R. It. Scr. vii. 989.

[2] C. 2, Ad Apostolicae, ii. 14, de Sent. et re Jud. in 6. Mansi, l.c. p. 613.

[3] Böhmer, Reg. Imp. ii. p. 54.

§ 14.

The Pope regarded as hypocritical and deceitful snares all such proposals of the emperor's as the following: To effect the subjection of the Greek Empire to the obedience of Rome, which was a task beyond Frederick's strength, and one which he had never furthered in the slightest degree; to undertake a new Crusade, when for sixteen years, to the great loss of Christendom, he had refused to engage in one; to fight against the Mongols, who had invaded and were devastating Germany, when his duty as ruler already made it incumbent upon him to resist them. These high-sounding promises, made at Lyons by Thaddeus of Suessa, might have had some effect if Frederick had at least in

some measure performed those he had previously sworn to at Rome ;[1] but as he had not executed what was light and easy, how could great and arduous things be expected of him? After the sentence Frederick declared, in a memorial of the 31st July 1245,[2] that he acknowledged the Pope's supremacy in spiritual things ; but not his right to take kingdoms at will, and inflict the loss of their kingdoms upon kings and princes, least of all upon the German emperor, who was independent of all laws.[3] He asserted that all the proceedings against him were informal and illegal. In maintaining that his condemnation could be upheld neither by divine nor human laws, Frederick overlooked the fact that with regard to Sicily he had acknowledged in public documents that he was the Pope's vassal ; he also overlooked the whole development of the public law of Christian States. His anger knew no bounds. He demanded a third of its revenue from every diocese for the expenses of the war against the Pope and the Lombards, shamefully maltreated the followers and relations of the Pope, banished all priests who obeyed the sentence of Lyons, persecuted especially the Franciscans and Dominicans, even commanding that they should be bound together in couples like foxes to be burnt.[4] Nothing could be hoped for from such a tyrant : the Pope, attacked to the uttermost, had to adopt extreme measures in his defence. In the spring of 1246, public opinion in Germany had so far undergone a reaction against Frederick, that the followers of the Pope united to choose an opposition king in the person of Henry Raspe of Thuringia, who was victorious on the 5th August 1246, near Frankfort, over Frederick's son Conrad.[5] From 1247, when William of Holland was elected in Germany, the fortune of war deserted Frederick also in Italy. As to the endeavours for a reconciliation set on foot by Louis IX. of France,[6] it is certain that Innocent IV. knew the deposed emperor far better than the French king did ; at the very time of his memorials and his cunningly devised letter to Louis of September 1245, Frederick had issued commands and undertaken affairs in direct contradiction to the sentiments therein expressed ; but by this time he was too well known and his schemes were too plainly deceitful.[7] The Pope, and

especially the Council of Lyons (can. 14-17),[8] did their utmost to remedy the loss of the Holy Land and the defencelessness of Germany against the Mongols, whilst Frederick applied himself only by words to both these important matters. Not till he saw death approach did Frederick testify any repentance, and he then endeavoured to repair many a grievous wrong. His influence might have been as profitable as it was rendered fatal through his sensuality, cruelty, faithlessness, and tyranny. The only fruit of the splendid education he had received from his guardian, Innocent III., was that he fostered learning and education. In the early part of his career he cannot be said to have contributed to the prosperity of cities, for he framed laws prejudicial to their autonomy; only in the last five years of his reign did he show himself more favourable towards them.[9] His life was a grand misuse of his gifts and powers.

[1] Hefele, v. 984.

[2] Bréholles, vi. 331.

[3] Per quam (sententiam) imperator Romanus in laesae majestatis crimine dicitur condemnatus per quam ridiculose legi subjicitur, qui legibus omnibus imperialiter est solutus.

[4] Bréholles, vi. 357 seq. 366, 374, 375, 581, 701, 702. Cf. Höfler, Friedrich II. p. 227.

[5] Hefele, l.c. p. 1007 seq. 1009.

[6] A meeting between the King and the Pope took place at Clugny in Nov. 1245; further endeavours followed in the April and in the autumn of 1246 (Hefele, pp. 1005, 1008). Huber (p. 31 seq.) refers to Daunou, Essai Historique sur la Puissance Temporelle des Papes, i. 212. The report of the conversation, which Döllinger (Lehrb. ii. p. 219) thinks very questionable, comes from Matth. Paris.

[7] 'In omnibus se reddidit incredibilem' are words reported of the Pope by M. Paris. Later, Louis promised if it were necessary to defend the Pope and the Church by force of arms. Hefele, p. 1012.

[8] Hefele, pp. 993-996.

[9] Bréholles, iii. 445 seq.; iv. 286 seq.; vi. 366. Hefele, pp. 880, 882.

Part III. The Empire from Frederick II. till its Fall.

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clared to have forfeited the empire. § 11. His campaign in Italy. § 12. Louis and Benedict XII. § 13. The controversy as to Louis. § 14. Election of Charles IV. § 15. From Charles IV. to Charles V. § 16. Disputes with Charles V. § 17. Abdication of Charles V. § 18. Fall of the ancient German Empire.

§ 1.

From the deposition of Frederick II., A.D. 1245, till the coronation of Henry VII., A.D. 1312, there was no lawful emperor.[1] Innocent IV. endeavoured to obtain recognition for William of Orange, who had been elected by the Church party in Germany, and who, after the death of Frederick (December 13th, 1250), and after having conquered Conrad IV.,[2] had a meeting with the Pope at Lyons, and made some progress in Germany. After William's death in 1256, the German princes again split into two parties, who respectively elected Prince Richard of Cornwall and Alphonso X. of Castile. Of these the former came to Germany but for a short time, the latter never. Almost all the princes of the empire showed themselves to be corrupt, selfish, and fickle.[3] The Pope positively forbad the proposed election of the boy Conradin, because the Hohenstaufen were enemies of the Church, and the Holy See could not choose as her protector one who had insulted her.[4] Alexander IV., who was applied to by both candidates, gave no decision concerning the disputed election.[5] Urban IV., elected in 1261, invited both parties to Rome, there to state their case.[6] But both accepted the invitation as implying their right to be undoubted, that their summons to Rome signified that their election would be confirmed by the Pope, and that they should be crowned by him. Urban upon this rejected both candidates, and justly, for how could his decision carry weight if he were denied the right to decide? Alphonso was the first to take this step, and Richard's ambassador followed. The Pope endeavoured to negotiate an understanding between the parties. His successor, Clement IV., at once took up the affair; both sides prevaricated, and the German princes, contrary to the Pope's advice, meditated a fresh election. When Alphonso, after the death of Richard in 1272, demanded the imperial crown of Pope Gregory X., the latter declared that he

must first hear the German princes who had elected Richard, for that their rights should not be encroached upon. Alphonso was offended at this, and conceived the project of sending an army into Italy. But as his supporters in Germany were dead, and he now enjoyed little consideration there, the time seemed come to end the strife, and Gregory advised the princes to make a new and unanimous election, otherwise with the help of the cardinals it would be his care to provide an emperor.[7]

Rudolph of Hapsburg was elected in 1273, and on the 26th September 1274, was recognised at Lyons by the Pope as King of the Romans. Later, when Alphonso had shown himself inclined to give way, Rudolph was invited to receive the imperial crown. He met the Pope, Gregory X., at Lausanne, in October 1275, and took the customary oaths;[8] but he never came to Rome to be crowned. Rudolph died in 1291. In 1279, under King Rudolph and Pope Nicholas III., many princes of the empire expressly acknowledged it to be a special favour from the Holy See that the king they elected was also chosen to be future emperor. The codes of law known as the Sachsenspiegel and the Schwabenspiegel are identical with the Pope's view of public law.[9] The latter maintained that the emperor should exercise his authority to procure due obedience for the Pope in case of necessity by the imperial ban. The Germans elect the King of the Romans[10] and enthrone him at Aix-la-Chapelle, but the Pope by his consecration confers the full power of the empire and the imperial title.

[1] Phillips, K.R. iii. § 123, p. 123.

[2] 'Such bitterness had the Pope created in men's minds,' exclaims Huber (p. 32), 'that even German prelates had sworn to murder their king.' But the prelates in question (the Bishop of Ratisbon and the Abbot of St. Emmeran) had suffered very much from the Hohenstaufen, and were thus exercising a private revenge upon Conrad, whom besides they did not recognise as their lawful king. It is nowhere shown that Innocent IV. had any share in the sudden attack made on Conrad at Christmas 1250; he had only expressed himself against Conrad, who appeared to be following his father's example only too closely.

[3] Hefele, vi. p. 10 seq.

[4] Alex. IV. Const. 7, Firma, to the Archbishop of Mainz, July 1256, § 1: 'Quanta vigilantia debet adhiberi, ubi de advocato Ecclesiae agitur, de ipsius defensore tractatur, ne pro advocato impugnator et pro defensore

assumatur offensor.' Cf. Card. Vinc. Petra, Com. in Const. ap. t. iii. p. 116 seq.; Urban IV. ap. Rayn. a. 1262, n. 5 (not Urban VI., as we find it in Huber, p. 23). By the election of Conradin, who was at that time only four years old, the existing condition of rebellion against law and order would not have been ended but increased. The same reasons held good now as at the death of Henry VI.

[5] Raynald. a. 1257, n. 8; 1263, n. 40, 41, 43.

[6] Cf. Bianchi, t. ii. l. vi. § 8, n. 3, p. 555 seq.

[7] Böhmer, Fontes, ii. p. 112. Cf. Ricord. Malasp. Hist. Flor. c. cxcviii.; Villani, Chron. l. vii. c. xliii.; Naucler. Gen. c. xliii.

[8] Raynald. a. 1274, n. 7, 12, 51, 54; a. 1275, n. 37 seq.

[9] Pertz, M. G. Hist. iv. 421: 'Complectens ab olim sibi Romana mater Ecclesia quadam quasi germana charitate Germaniam illam eo terrenae dignitatis nomine decoravit, quod est super omne nomen temporaliter tantum praesidentium super terram, plantans in ea principes tamquam arbores praeelectas et rigans illas gratia singulari, illud eis dedit incrementum mirandi potentia, ut ipsius Ecclesiae auctoritate suffulti, velut germen electum per ipsorum electionem illum, qui frena Romani teneret imperii, germinaret.'

[10] Cf. Senkenberg, in the preface to the Schwabenspiegel, § 20; Eichhorn, Deutsche R. und Rechts-Geschichte, vol. ii.; Gosselin, ii. p. 323 seq. Vide the passages in Friedberg, p. 29, No. 5; p. 87, No. 1.

[11] The land law of the Sachsenspiegel, b. iii. a. 57, § 2, and the feudal law of the same code, art. 4, § 2, mention expressly the seven electors. The English ambassadors in Rome under Urban IV. mentioned them in their judicial statement in favour of Richard of Cornwall, according to Urban's letter to Richard (Raynald. a. 1263, n. 53). Cf. Hefele, vi. p. 18, No. 1. Nicholas of Cusa thought they had been appointed by the Emperor Henry II. with the consent of the nobles and people. Cf. Düx, Nicholas of Cusa, vol. ii. p. 303. Thomassin (P. iii. l. i. c. xxx. n. 18) places their origin in the second half of the thirteenth century.

§ 2.

Adolphus of Nassau could not aspire to the empire; he was a man of small account. Albert of Austria, who conquered and slew him in 1298, was acknowledged King of the Romans for the first time in 1303.[1] He despatched a letter to Rome, promising fidelity and obedience, and fully recognised that the Roman See had conferred upon the German princes the power of electing the King of the Romans and future emperor.[2] He promised also not to send any imperial vicar to Tuscany or Lombardy for five years without the consent of the Pope, and to fight against the enemies of the Church. On the 1st May 1308, Albert was murdered by his nephew John.

[1] Rayn. a. 1302, n. 2 seq. Böhmer, p. 231 seq. 243.

[2] Rayn. a. 1303, n. 8-13. Pertz, ii. 483, 484. Böhmer, p. 235. Albert acknowledged: 'Quod jus elegendi Romanorum regem in imperatorem postmodum promovendum certis principibus ecclesiasticis et saecularibus est ab eadem Sede (sc. Ap.) concessum, a qua reges et imperatores, qui fuerunt et erunt pro tempore, recipiunt temporalis gladii potestatem ad vindictam malefactorum laudem vero bonorum.' He avows: 'Quod Romanorum reges in imperatores postmodum promovendi per Sedem eamdem ad hoc potissime ac specialiter assumuntur, ut sint S. Romanae Ecclesiae advocati, Catholicae fidei ac ejusdem Ecclesiae praecipui defensores.' Albert also fully acknowledges what appears to Huber (p. 87) as Papal usurpation.

§ 3.

Philip the Fair of France endeavoured to obtain the vacant imperial throne for his brother Charles of Valois; but the Pope, through Cardinal Prato, brought his influence to bear upon the spiritual electors,[1] and in 1308, Henry of Lutzelburg was unanimously elected. Henry's ambassadors took the customary oaths relative to the protection of the Pope and of the Church,[2] and he renewed them in person at Lausanne in October 1310. On the 6th January 1311 he was crowned King of the Lombards at Milan, and received the imperial crown from the hands of the cardinal delegates at the Lateran on the 29th June 1312.[3] Henry thought that as emperor he was monarch of all the world, and that all kings were subject to him; but as he was not powerful enough to maintain his position over the various parties in the empire, he shortly found himself merely leader of the Ghibellines. He quarrelled with King Robert of Naples, whom he treated as a simple vassal, whereas he was so only as far as his earldom of Provence was concerned. When (before Henry's coronation as emperor) Clement V. bade both him and Robert conclude a peace and recall their troops from Rome, appealing to the oaths each had taken to the Holy See, Henry, surrounded as Frederick Barbarossa used to be with a crowd of lawyers,[4] protested that in their opinion it was quite unlawful to put him and his vassals on a par, and to ascribe to him an oath of fidelity which he had never sworn, and thus to slight the imperial dignity. At the same time he declared himself willing, from affection for the Pope, not to make war upon

Robert for the space of one year, and to send a stately embassy to Avignon.[5]

[1] Christophe, Hist. of the Papacy during the Fourteenth Century (Germ. Trans.), vol. i. book iii. pp. 173, 174.
[2] Pertz, Leg. ii. p. 492 seq. Rayn. a. 1309, n. 10 seq.
[3] Hefele, vi. 383 seq. Phillips, K.R. iii. § 132, p. 276 seq.
[4] Barthold. Römerzug Heinrichs VII. vol. ii. p. 279.
[5] Raynald. a. 1312, n. 44 seq. Hefele, vi. p. 489.

§ 4.

That the German emperor was never considered a *vassal* of the Pope, that his oath was not the same as a *feudal* oath of allegiance, appears from the following considerations: (1) No Pope at his accession ever thought of requiring that the emperor should apply to him for a renewal of his investiture, as a feudal lord might have required from a vassal. (2) The oath taken by the emperor was an oath of homage, but not a feudal oath. If it had been a feudal oath it would have stated that the emperors held their dominions from the Holy See, whereas it only lays down the obligation of protection and fidelity towards the Holy See, and contains the promise of defending her.[1] The difference may be seen by comparing the oath which Robert Guiscard took for Naples[2] with the oath taken by the German emperors.[3] The form of oath which Gregory VII., after the death of Rudolph (15th October 1080), sent to Bishop Altmann of Passau and Abbot William of Hirscham to be sworn by the new king was intended only to insure to the Pope security against schism and against the antipope set up by Henry IV.; it promised obedience 'as befitted a Christian.' Rudolph also had promised this.[4] The words 'champion (miles) of St. Peter and of the Pope' show no special feudal relation.[5] (3) As the Pope in conferring the title of emperor upon Charles the Great and Otho the Great gave them no new territory, but only a dignified office and a preëminence over other princes, and laid upon them the obligation of protecting the Church, this obligation is naturally the chief matter of the oath.[6] Henry VII. took precisely the same oath.[7] We find feudal investiture only in the case of Lothair II. receiving from Innocent II. Mathilda's in-

heritance for himself, his daughter, and his son-in-law,[8] as well as in the investiture with the kingdom of Sicily. The marks of reverence prescribed by custom[9] were not accounted humiliating in the Middle Ages. Some were in use only during a short period; for instance, the 'adoration,' which later became obsolete. All these acts are quite independent of feudal investiture.

[1] Phillips, K.R. iii. § 119, p. 58 seq.

[2] Hefele, Conc. iv. 768; v. 139. Formulas of 1059 and 1080, the latter post Greg. VII. l. viii. Ep. 1, p. 574 seq. Pag. a. 1080, n. 5.

[3] Vide the oath of Otho I. in c. xxxiii. d. 63, Pertz, M. G. iv. 29. Also Phillips, l.c. § 123, p. 115 seq. 125 seq. Of Henry II. we read in Dietmar, Chron. l. vii. Baron. a. 1014, n. 1: 'Ad Ecclesiam S. Petri, Papa exspectante, venit et antequam introduceretur, ab eodem interrogatus, si fidelis vellet Romanae patronus esse et defensor Ecclesiae, sibi autem suisque successoribus per omnia fidelis, devota professione respondit et tunc ab eodem inunctionem et coronam .... suscepit.' The coronation oaths of 1111 and 1133 (Pertz, l.c. pp. 68, 82) are equally different from feudal oaths.

[4] Greg. VII. l. ix. Ep. 3, p. 608: 'Providendum est ergo, ut non minus ab eo, qui est eligendus in regem, inter tot pericula et labores sperare debeamus.' Ib.: 'Sanctae Ecclesiae humiliter devotus et utilis, quemadmodum Christianum regem oportet.'

[5] Although the word 'miles' is often used of vassals (l. iii. Feud. tit. 1, § 1), in itself it is much more comprehensive. So too 'ligium' and 'homagium' are both used in different senses. The use of the words 'fidelis' and 'dominus' neither prove an oath of vassalage (Friedberg, l.c. pp. 82, 83). Bossuet, l. i. sect. 1, c. xii. p. 110, makes his case very easy by giving no proofs. It all depends upon the obligations entered into. In this case these are: (1) Obedience to the Church as befits a Christian; (2) agreement with the Pope concerning the ordinatio ecclesiarum and concerning the territory and prerogatives of the Holy See; (3) defence of the Church. There is no word of a feudal tribute. Cf. Bianchi, t. i. l. ii. § 12, p. 328 seq. In Bernold, 'miles' and 'fidelis' are used as general terms (Phillips, p. 132, No. 45). Baldwin I., who notified to Pope Innocent III. in a letter in 1204 his election as Emperor of Constantinople, called himself 'Dei gratia imperator et semper Augustus,' and at the same time 'miles Papae' (Innoc. III. l. vii. Ep. 152; Migne, ccxv. p. 447).

[6] Murat. Liturgia Romana vetus. Venet. 1748, f. t. i. p. 455. Cf. Dissert. de Reb. Liturg. c. vi. pp. 72-77.

[7] According to Clement V. c. Romani principes, ii. 9, in Clem., the oath was quite the same as the formula in Muratori: 'Ego Henricus Romanorum rex, annuente Domino futurus imperator, promitto, spondeo et polliceor atque juro coram Deo et B. Petro, me de caetero protectorem et defensorem fore summi pontificis et hujus S. Rom. Ecclesiae, in omnibus necessitatibus et utilitatibus suis, custodiendo et conservando possessiones, honores et jura ejus, quantum divino suffultus adjutorio fuero, secundum

scire et posse meum, recta et pura fide. Sic me Deus adjuvet et haec sancta Dei evangelia.'

[a] Cf. Hefele, v. p. 375.

[b] Pipin exercised the 'officium stratoris' for the Pope's horse towards Stephen II., and the Emperor Louis II. towards Nicholas I. Vita Steph. II. et Nicol. I. (Baron. a. 753, n. ult. a. 858); also in 1095, Conrad, son of Henry IV. (Pertz, x. 474). The Sachsenspiegel says it symbolised the union of both powers and the help rendered by the civil power. Cf. Friedberg, l.c. p. 84, No. 2.

§ 5.

Henry was right in maintaining he had taken no oath of vassalage to the Pope, and was not, like Robert, the Pope's vassal. Both were defenders of the Church, but with different rights and for different reasons. He was, however, wrong in repudiating the oath of fidelity, which he confused with the feudal oath (homagium). He had promised fidelity, if not the fidelity of a liegeman. It appertained to the oath of fidelity which he had sworn to the Pope that he should not engage in war with any of the Pope's vassals.[1] Henry, however, maintained the alliance with King Frederick of Sicily, and prepared for war against Robert. After an abortive undertaking against Florence, he laid the ban of the empire upon Robert, and sentenced him to capital punishment.[2] The Pope, with the utmost consideration, intreated Henry VII. to retract the hasty order; at the same time the Kings of France and England requested him immediately to declare the emperor's sentence to be null and void. Any further measures of Henry's were frustrated by his early death on the 24th August 1313.[3]

[1] That is also to be found in Rudolph's oath. Vide Raynald. a. 1274, n. 9.

[2] Pertz, iv. 544 seq.

[3] Raynald. a. 1313, n. 24.

§ 6.

Pope Clement V. saw that the emergency required that he should enter more fully into the matter in two decretals. He declared that the oath which Henry had taken was an oath of fidelity,[1] like those of former emperors and kings;[2] Robert lived in Naples, and there was the Pope's vassal; the Pope was his

ordinary judge, therefore Henry could not summon Robert before his judicial tribunal outside the kingdom. The judgment had been delivered against an absent and undefended person, who was under no obligation to appear, least of all in a place that would not have been safe for him; it was a usurpation of jurisdiction, especially as it condemned the king to the loss of his kingdom, which was not held under the emperor, but under the Holy See.

[1] C. un. Romani principes, ii. 9, de jurejur. in Clem.

[2] The Pope quotes l.c. § Praefatis itaque, the formula in decretis (c. 33, Tibi Domino, d. 63), also the others used at the coronation, § Postque idem, and the promises collectively, § Porro praeter. He also calls to mind the promises of Rudolph and Albert. The Pope only speaks of the juramentum fidelitatis, nowhere of the vassal's oath (Huber, p. 39). The former was common to both princes, not so the latter. Clement V. describes the difference between them in the words: 'Cum ipsi reges ejusdem Ecclesiae specialissimi filii sibi juramento fidelitatis *et alias* multipliciter essent adstricti.'

§ 7.

After the death of Henry VII., the Pope appointed King Robert, during the vacancy of the empire, imperial vicar in Italy,[1] the crown of Italy being quite distinct from the crown of Germany. In this he acted in accordance with customary law, and followed the example of earlier Popes; by whom, to take one example, King Charles in 1268 was appointed imperial vicar.[2] The customary law attributed the care of the empire during an inter-imperium to the successor of St. Peter,[3] whose authority would, better than any other, restrain contending parties.[4] The imperial vicar should guard the imperial prerogatives, but relinquish his office as soon as the Pope should have confirmed as emperor the elected King of the Germans.[5] In Italy several petty dynasties usurped the authority of imperial vicar, had allegiance sworn to themselves, and occasioned much disorder. John XXII. rejected these would-be imperial vicars as interfering with the Papal prerogative, and threatened those who resisted with the ban and interdict.[6]

[1] Raynald. a. 1314, n. 2: 'Nos, ad quos Romani vacantis imperii regimen pertinere dignoscitur.'

[2] Raynald. a. 1267, n. 5-9. Bzov. h.a. n. 1. Bianchi, l.c. n. 4, pp. 559, 560. Spondan. h.a. n. 3, 4; a. 1268, n. 6. Ricord. Malesp. c. clxxxv. clxxxviii. Villani, l. vii. c. xv. xvi. xxi. Leon. Aret. l. ii. S. Antonin. Sum. Hist. tit. 20, c. i. § 5.

[3] Bianchi, t. ii. l. vi. § 8, n. 1, pp. 552, 553. Phillips, pp. 288, 289.

[4] Raynald. a. 1267, n. 9.

[5] Rayn. a. 1314, n. 2 (Clement V. to King Robert, 14th March 1314).

[6] C. Si fratrum, tit. 5. Ne Sede vacante, in Xvag. Joh. Rayn. a. 1317, n. 27 seq.; a. 1319, n. 6. Cf. Phillips, p. 290 seq.; Bianchi, l.c. n. 5, p. 561 seq. The words 'Cui in persona B. Petri terreni simul et coelestis imperii Deus jura ipse commisit,' are like similar earlier utterances of Popes, not to be taken to mean that the spiritual and temporal sovereignty are intrusted to him *alike*, and that all kingdoms are subject to him in temporal affairs. The rights of both are intrusted to the Pope's care, and he is bound to watch over them. With regard to the Holy Roman Empire, he had, however, special rights as having reconstituted it.

§ 8.

It was during the period that intervened between the death of Clement V. and the accession of his successor, John XXII., that the unfortunate double election occurred in Germany, when Louis of Bavaria was crowned at Aix-la-Chapelle and Frederick of Austria at Bonn, A.D. 1314.

Louis had the majority of votes. His election was made at the customary place, and he had been crowned at Aix-la-Chapelle. So much was in his favour. But his coronation had been performed by the Archbishop of Mainz, whilst Frederick had been crowned, though not in the right place, yet by the right person, the Archbishop of Cologne.[1] As the Papal chair was then vacant, Louis' electors wrote to the future Pope concerning the election (in which there was a question as to the rights of the Bohemian, Saxon, and Brandenburg electors),[2] demanding recognition for Louis and his coronation as emperor.[3] There was at that time no law in favour of the majority; neither of the parties would give way, and both were anxious to try the fortune of war. The Papal decision did not now carry all the force which it possessed in the time of Innocent III., for the influence of France was suspected in the decrees of the Papal court of Avignon. Neither was it now quite easy to arrive at a decision, for the balance of justice did not turn decidedly against

either claimant.[4] John XXII. rightly found it impossible to decide in favour of Louis without hearing the other side. On the very day of his coronation (September 5, 1316) he wrote to Louis and Frederick, as well as to the princes of the kingdom, admonishing them to an amicable arrangement of the dispute.[5] A king unanimously elected by the German princes at that time would have been invited by the Pope to receive the imperial crown. But they could not agree; they hesitated, and some desired to remain neutral until the Pope should have confirmed one or other of the claimants.[6] Until 1322 the fortunes of war were also indecisive.

As early as 1315, Louis appointed an imperial vicar for Italy, in the person of John of Belmont;[7] and he also supported Galeazzo Visconti of Milan, who was in open insurrection against the Church, and had been visited with censure,[8] against Robert of Naples. When Louis informed the Pope of his victory at Mühldorf in June 1322, John, by his friendly congratulations, invited him to further advances.[9] But Louis would submit to no examination of his claim by the Pope, and demanded instant recognition; he had, in fact, acted as King of the Romans, and even as emperor, contrary to all ancient principles and the ideas of most of his contemporaries.[10] He suffered his army in Italy to act against the Papal vicar; wherefore the Pope solemnly warned him, under pain of excommunication, to desist within three months from administering the empire, and to revoke all his acts in Italy.[11]

[1] Hefele, vi. pp. 510-512.

[2] Raynald. a. 1314, n. 24, 25.

[3] Ep. apud Rayn. h.a. n. 22: 'Eapropter Sanctitati vestrae tam humiliter quam devote voto unanimi supplicamus, ut ipsum electum nostrum in regem Romanorum paternis ulnis amplectentes munus inunctionis et consecrationis eidem conferendo de sacrosanctis manibus vestris sacri imperii diadema dignemini loco et tempore favorabiliter impertiri.'

[4] Phillips, § 133, p. 292 seq.

[5] Raynald. a. 1316, n. 10.

[6] Mutii Chron. Germ. l. xxiv. p. 866: 'Plurimi exspectabant confirmationem, interea neutri adhaerere volebant.'

[7] Ficker, Urkunden z. Gesch. des Römerzugs K. Ludwig d. B. 1865, p. 1 seq.

[8] Raynald. a. 1322, n. 8; 1324, n. 9 seq.

[9] Ib. a. 1323, n. 15.

[10] Mutii Chron. Germ. l.c.: 'Tanta Romanae Sedis auctoritas et religio erat apud plerosque, ut non judicarent nec appellandum censerent imperatorem nisi prius unctus, coronatus et confirmatus esset.' Gerard de Roo, l. ii. p. 88: 'Et Pontificis auctoritas ea apud plerosque reverentia erat, ut ab ejus confirmatione imperatoria dignitas penderet.'

[11] Raynald. a. 1323, n. 30.

§ 9.

The Pope on Louis' entreaty granted him a longer term.[1] But whilst the negotiations were still pending Louis declared war upon Frederick's adherents, and protested against the proceedings of the Pope. He refused to admit the Pope's right, which had always been acknowledged, of examining into the election of the King of the Romans before conferring the imperial crown. He loaded the Pope with all manner of reproaches, especially for having favoured heretics, and he demanded a General Council.[2] Louis had fallen into the trap laid for him by the heretical Franciscan spiritualists, who found in him a powerful ally against the Pope.

At length, on the 23d March 1324, the Pope excommunicated him. Louis, on this, issued through the spiritualists a new and still more violent manifesto against the Pope, in which he was even spoken of as a heretic.[3] Everything was done to nullify the Papal sentence, and the electors were especially told that he was encroaching upon their rights. John XXII. declared that to be a falsehood.[4] He had demanded nothing new, and maintained merely the privileges always exercised by his predecessors. A king like Henry VII., unanimously elected, had never been rejected by the Pope; but when the votes were divided custom had always given to the Pope the right of deciding, since this right did not by law rest with the majority. The electors often paid more heed to the money given for their votes than to the welfare of the empire and the Church; hence the importance of the Pope's examination of the candidate before his coronation as emperor.

[1] Raynald. a. 1324, n. 3.

[2] Herwart ab Hohenburg, Ludovicus IV. Imp. defensus, p. 245. Rayn. a. 1323, n. 34-36. Böhmer, Regesten K. Ludwig's, p. 218.
[3] Rayn. a. 1324, n. 14. Böhmer, p. 42. Cf. Hefele, vi. p. 515.
[4] Raynald. a. 1324, n. 17. Christophe, l.c. book v. p. 282.

§ 10.

As Louis, besides making arbitrary appointments to bishoprics and persecuting the Archbishop of Salzburg[1] and the Bishop of Strasburg, persisted in his hostility, John, on the 11th July 1324, issued a fresh decree, in which, after detailing his grievances and admonitions, he declared Louis to have forfeited all right to the empire, and summoned him to appear in the following October before his tribunal.[2] At this juncture Duke Leopold of Austria concluded a treaty with Charles IV. of France, with the object of procuring the imperial crown for the latter. John concurred in the arrangement, but it was prosecuted with negligence on all sides, and was finally abandoned by the King of France.[3] Louis, in January 1325, was vanquished by Duke Leopold; and, forsaken by many princes, he found himself in much distress. He set his imprisoned adversary, Frederick, at liberty under hard conditions, which were not recognised either by the Pope or by Duke Leopold. Louis desired, in September 1325, to share the government and the title of king with his former adversary, with whom he was now reconciled, and who had returned into captivity; but the princes declared that both had lost their right to the kingdom, and Leopold continued the war. On the 7th January 1326, Louis, being in great difficulties, declared at Ulm that he was willing to resign the kingdom to Frederick, whilst retaining the imperial crown and Italy.[4] Frederick did everything to gain over his brothers. Leopold died on the 28th February. As the treaty of Ulm decreed, the Pope's ratification was sought for Frederick, but the Pope declared that he could not grant it until the authentic proofs confirming his better right were laid before him. Louis after this believed himself to be no longer bound by the Ulm treaty, and this led to a dispute betwixt him and Frederick.[5]

[1] Raynald. a 1324, n. 21. Christophe, l.c.
[2] Rayn. a. 1324, n. 17, 21 seq. Böhmer, p. 216.
[3] Christophe, p. 285 seq.
[4] Raynald. a 1325, n. 6.
[5] Hefele, vi. pp. 515-517, where the books on this subject are specified.

§ 11.

Louis' Italian campaign, his acts of violence towards the Pope's adherents in Italy, his close alliance with Marsilius of Padua, John Giandone, and the Fraticelli, his acceptance of their heretical doctrines,[1] his coronation at Milan by two excommunicated and deposed prelates, his anointing in Rome by an apostate bishop, when Sciarra Colonna, the notorious companion of Nogaret, placed the crown upon his head in the name of the Roman people, his continuing to call himself emperor, his attempted occupation of the States of the Church and the kingdom of Naples, the deposition he pronounced on the 18th April 1328 of John XXII., his appointment of an antipope,[2] together with a number of heavy crimes against the Church, could only widen the breach. In 1328 the German princes were inclined to agree to the demand of the Pope and proceed to a new election, but did not do so owing to a want of unanimity.[3] On the 4th August 1328, Louis, much mortified, was forced to leave Rome, and by the end of 1329 he found himself obliged to abandon Italy also.[4] In Germany, after the death of Frederick (13th January 1330), Louis again showed himself extremely untrustworthy and uncertain.[5] Whilst still openly defying the Pope, he began to treat with him through some princes in Avignon (May 1330). He declared himself willing to sacrifice the antipope, to relinquish his appeal to a General Council, to recall all he had done against the Church, to acknowledge the justice of his own excommunication, if only his authority were guaranteed.[6] But the antipope had already submitted, and the schism had terminated ignominiously. Louis had made no promises with regard to the Fraticelli, and it appeared impossible to allow him to retain an authority he did not rightfully possess. So limited a submission could not satisfy the strict principles of law to which John XXII. so tenaciously adhered. The Pope

declared that as Louis still protected heresy and performed no satisfaction, any agreement with him was out of the question, and the election of a new king was required.[7] The only way for him to prove the reality of his repentance, which must precede his release from excommunication, appeared to be the renunciation of the imperial dignity which he had usurped, and of which his continuance was a continual misprision of the existing law. As in 1333, Louis seemed ready to agree. The Pope sent envoys to him with an amicable letter.[8] In 1334, John XXII. died.[9]

[1] Cf. Christophe, p. 288 seq.; W. Schreiber, in Die polit. und relig. Doctrinen unter Ludw. d. B. 1858, p. 24 seq.

[2] Christophe, pp. 292-307. Hefele, p. 518 seq.

[3] Hefele, p. 520, and the authors cited in note 2.

[4] Christophe, p. 310 seq.

[5] Von Weech also admits this weakness (K. Ludwig d. B. und K. Joh. von Böhmer, mit. urkundlichen Beilagen, 1861).

[6] Raynald. a. 1330, n. 28, 34, 35. Böhmer, Reg. p. 194.

[7] Martene, Thes. ii. p. 800. Rayn. a. 1330, n. 29, 33 seq. Christophe, vol. ii. b. vi. p. 17.

[8] Raynald. a. 1334, n. 19-22; admonition to repentance of June 28.

[9] Hefele, vi. 521 seq. Christophe, ii. pp. 17, 18. Phillips, p. 300.

§ 12.

The gentle Benedict XII. lost no time in informing Louis of his willingness for a reconciliation, but to this the Kings of France and Naples, and later those of Bohemia and Poland, offered opposition. The Pope's efforts were impeded by the policy of France, whose object was facilitated by Louis' changeable demeanour. Louis finally declared, in a constitution of the 8th August 1338,[1] that the imperial authority (as then existing) was derived immediately from God, a proposition which neither Popes[2] nor theologians[3] of that time could accept; also that the emperor could not be judged by the Pope, but that the Pope could be judged by a General Council. The document ascribed to the Kurverein (electoral assembly) of the 6th July 1338, which also alleges that the imperial dignity comes immediately from God, and that he whom the electors chose is lawfully to be and to be called king, the contrary to be accounted

high treason, must be regarded as unauthentic, neither can the letter of the electors to the Pope be looked upon as genuine.[4] Most critics, on the other hand, recognise the genuineness of the document of the 16th July, which declares that he whom the majority have elected is to be acknowledged as lawful king. This obviated the necessity for a unanimous election, enforced the submission of the minority to the majority, and rendered ratification by the Pope superfluous. Whether the princes, if they did not observe the other duties incumbent upon them as electors, were entitled to force upon the Pope as future emperor *every* candidate whom they might have elected, is another question, answered not as they would wish by the traditional custom of the empire to which they appeal. Least of all could it be employed retrospectively in favour of Louis, whose election was not unanimous, and who was under the excommunication which had so many times been inflicted upon him. Indeed, these same electors afterwards ceased to acknowledge Louis as lawful king, and agreed to the Pope's proposal of electing another.[5] The King of Bohemia took no share in the declaration extorted at that time from Louis.[6] This declaration was in contradiction with those of former emperors and electors, as well as with Louis himself,[7] especially with the promises and confessions he had made in 1336, when he undertook to refrain from any enactments in Italy,[8] and to acknowledge his coronation as emperor to have been illegal.[9]

[1] Böhmer, Reg. Ludw. p. 120. Hartzheim, Conc. Germ. iv. 328 seq.

[2] Raynald. a. 1342, n. 43 seq.; a. 1346, n. 3 seq. Clem. V. c. Romani principes cit.; Joh. XXII. Const. Si fratrum cit.

[3] Alvarus Pelag. de Planctu Eccles. l. i. c. lxvi. Alex. a S. Elpidio, O.S.A. de Jurisd. Imper. et Auct. Pontif. Petrus de Palude, de Causa immed. Eccles. Potest. Cf. Almain. de Supr. Eccl. Pot. c. i.; Pighius, l. v. de Eccl. Hier.; Bellarm. de Laic. iii. 6; Suarez, de Leg. iii. 2, 3; Gravina, de Jure natur. et gent. § 18; Charlas, de Libert. Eccl. Gall. t. ii. l. vii. c. iv.

[4] Böhmer, Reg. p. 241 seq. Ficker, Der Churverein zu Rhense (Report of Session of the Academy of Vienna, 1853, vol. xi.). Weech, l.c. p. 69 seq. Hefele, vi. p. 559. In one notarial instrument the proposition is expressly accepted: 'Papa major est imperatore, quia dominus spiritualium et animarum est, iste vero dominus corporum et rerum.'

[5] Phillips, pp. 297, 298.

[6] Raynald. a. 1338, n. 10. Spondan. h.a. n. 23. Bianchi, t. ii. l. vi. § 8, n. 6, p. 562.

[7] Bianchi, l.c. 563 seq. Rayn. a. 1338, n. 12.

[8] Raynald. a. 1336, n. 23: 'Quod non ingrediemur partes Italiae nec in eis nec de eis per nos vel alium sive alios aliquid administrabimus aut quomodolibet disponemus, donec probationem apostolicam personae nostrae fuerimus assecuti.'

[9] Ib. n. 35: 'Nos assumpsisse titulum imperialem et unctionem in Roma perverse, male et injuste et a potestatem non habente, item .... quod credimus, quod ad summum pontificem spectat hoc facere, et non ad alium.'

§ 13.

If in the controversy with Louis writers who sided with the Church express themselves very strongly,[1] those of his contemporaries who defended him exhibit equal one-sidedness and exaggeration. They confused the empire and the kingdom; Occam and Marsilius denied that the Pope had power to depose the emperor, whom they even called his lord; and they said that the emperor could with far better right depose the Pope.[2] Neither side could view the circumstances in the light of history; but the attitude of Louis' party, which included many heretics, could not alter the rights of the case, and the principles of the Church for some time still retained their ascendency.[3] But by degrees the King of Germany was called emperor, without regard to his coronation by the Pope;[4] and as time went on, this custom became more frequent. Later writers have more and more misconceived the legal principles of the case. Warnkönig is right in the main point when he says: 'Of lasting importance was the principle established by the constitution of the Carolingian empire—that any one cut off from the Church by excommunication had no right to the empire; whence follows, as a matter of course, that an excommunicated emperor was legally incapable of reigning. Excommunication was the Pope's chief weapon against the emperor, and one which for the deposition of the emperor he believed himself all the more qualified to wield, *because the imperial dignity was created by the Pope, and it was necessary that the German king should be crowned by the Pope in order to become emperor.* They had also a *de facto* power, because through the development of the feudal system,

especially after fiefs had become hereditary, the Pope excommunicating an emperor could count upon adherents amongst the opponents of the emperor.'[5]

[1] Thus Augustinus Triumphus (†1328), Summa de Potestate Ecclesiae ad Joh. P. XXII. (Abridgment in Friedberg, l.c. pp. 237-244, 30, 31, and elsewhere), who speaks of the emperor as 'minister Dei, ergo et Papae,' and circumstantially develops the rights of the Pope over the empire; also Alvarus Pelagius, de Planctu Ecclesiae, l. i. c. xli. xliv. xlvi. lvii. lxviii. (cf. Schwab, Joh. Gerson, especially p. 26). For the rest, it is admitted even by the former (q. 39, a. 3) that 'quod imperator statim electus absque Papae auctoritate possit administrare saltem in *regno Alamanniae*.'

[2] Occam, Quaest. octo decis. q. 3, c. ii.; q. 1, c. xvii. Dial. l. vi. c. xcii. Gold. ii. 347, 332, 610 seq. Friedberg, p. 74 seq. No. 7. Marsilius requires a General Council for the deposition of an emperor: Def. Pac. P. ii. c. xxv.; Gold. ii. 282; Jacob Almainus, de Potest. Eccl. et Laica, q. 2, ad c. viii. doctoris Occam, distinguishes two cases in which the emperor could be deposed: (1) 'propter crimen spirituale,' such as heresy; (2) 'propter crimen civile, quando negligit administrare justitiam.' Only in the first of these cases the Pope could depose him, 'cum habeat plenam potestatem in puniendis peccatis spiritualibus.' That is, according to c. xii., 'relaxare et jus declarare.'

[3] Friedberg, p. 69: 'Etsi vero medii aevi temporibus maximi aestimabant plurimi, jam juris Romani praecepta secuti, imperatoriam majestatem, tamen juris publici regulam fuisse vidimus, imperatores a Papis deponi posse, atque *singulos tantum viros* hasce doctrinas impugnasse.' Anton Rosellus (†1466), Monarch. P. iv. c. xl. p. 255, ed. Gold., teaches that the Pope could depose the emperor, 'causa haeresis subsistente vel simili.'

[4] So the later glosses to the Sachsenspiegel (vol. iii. art. 52), to the Saxon Weichbild (art. 3), in Friedberg, p. 85, No. 4, 5.

[5] L. A. Warnkönig, Die Staatsrechtliche Stellung der kathol. Kirche in den kath. Ländern des deutschen Reichs, Erlangen, 1855, pp. 8, 9.

§ 14.

Germany was in a miserable condition; but Louis' opposition to the Roman See was not shared universally. Great displeasure was occasioned when Louis, who from having been on the English side went over in January 1341 to the French side, dissolved the marriage of Margaretha, heiress of Carinthia and Tyrol, with Prince John Henry of Bohemia in virtue of 'imperial sovereignty,' and espoused her to his son Louis of Brandenburg, who was related to her in the third degree, thus offending at once the Church[1] and the house of Luxemburg.[2]

Clement VI., on the 12th April 1343, issued a severe Bull against him.[3] Louis delayed beyond the time appointed in the Bull, but in September found it necessary to enter into fresh negotiations. His envoys made a humble recantation, but Louis did not ratify it, and in 1344 the princes of the empire declared against it. Still, they wished to have no further dealings with a ruler who had brought ruin upon the empire.[4] Five electors on the 11th July 1346 chose Prince Charles of Bohemia, the former pupil of the Pope, to be their king; but after the death of Louis (11th October 1347) the Bavarian party opposed to him Count Gunther of Schwarzburg. On the death of the latter, 14th June 1349, all agreed in recognising Charles IV. As Aix-la-Chapelle barred its gates to him, he received the crown of Germany at Bonn on the 26th November 1346. He had already renewed to the Pope all the promises of former kings, and had made further promises of his own.[5]

[1] Occam (de jurisdictione Imperatoris in causis matrimonialibus) wrote in defence of this unusual proceeding. Goldast. i. 21. Cf. Marsil. Defens. pac. concl. 19, tract. Consultationis super divortio matrimonii. Launoi follows them in his work, Regia in Matrim. Potestas, Paris, 1674, c. ii. a. 1, P. iii., which was condemned at Rome on the 10th Sept. 1688. No law of the fourteenth or fifteenth century ventured to follow the example of Louis. Cf. Friedberg, p. 121.

[2] Raynald. a. 1341, n. 15. Phillips, pp. 301, 302. Döllinger, Lehrb. ii. p. 267.

[3] Rayn. a. 1342, n. 6 seq.; a. 1343, n. 42 seq. Böhmer, Reg. pp. 144, 231.

[4] Christophe, vol. ii. b. vii. p. 75 seq. Hefele, vi. p. 581 seq.

[5] Rayn. a. 1346, n. 19-24; 1347, n. 1.

§ 15.

At Easter 1355, in Rome, Charles IV. received the imperial crown from two delegated cardinals,[1] and fulfilled his promises.[2] In 1355 and 1356, by the Golden Bulls the rights of the electors were permanently regulated, and it was established that the majority of votes sufficed for the election of a king.[3] The emperor's quarrel with Innocent VI. was only temporary: it arose from his desire arbitrarily to undertake the reform of the German clergy.[4] Urban VI. had acknowledged Charles' son Wen-

zel as King of the Romans[5] on his election, 26th July 1378, by the German princes. Wenzel, as well as his father, who died shortly after (Nov. 29), declared himself against the Antipope Clement VII.,[6] and in these terms expressed the purpose of the empire: that as the bark covers and protects the tree, forming with it but one substance, so the emperor, placed with the civil sword on the outer surface of the Church, must protect her if need be with his own blood.[7] Wenzel was deposed by the princes in 1400, and Ruprecht of the Palatinate was elected: his election was confirmed by Boniface IX. in 1403.[8] He died in 1410, without having been crowned emperor. Wenzel lived till 1419: his dominions were limited to Bohemia. Sigismund, in 1433, received the imperial crown in Rome from Eugenius IV. Albert II., elected in 1435, after the death of Sigismund, reigned only two years, and had no time to receive the imperial crown from the hands of the Pope. Frederick III., on the contrary, was solemnly crowned emperor by Pope Nicholas V., 1452.[9] He was succeeded in 1493 by his son Maximilian, whom he had caused to be elected and crowned Romano-German Emperor in 1486. Julius II. in 1508 gave Maximilian the title of 'Roman emperor-elect,' which was thenceforth borne by the rulers of Germany.[10] Charles V. alone was crowned emperor by Clement VII.[11] At his election Charles had sworn to a capitulation, whereby he bound himself and others to protect the Church and the Pope; thenceforward written capitulations remained in use.[12]

[1] For detailed account of the ceremony, vide Raynald. a. 1355, n. 2-17.
[2] Raynald. a. 1355, n. 19. Christophe, l.c. b. x. p. 202.
[3] Rayn. a. 1356, n. 13-25. Hefele, p. 608 seq.
[4] Christophe, ii. pp. 241-243.
[5] Rayn. a. 1378, n. 41.
[6] Hefele, vi. pp. 672, 673.
[7] Rayn. a. 1379, n. 40 seq. Hefele, p. 676.
[8] Rayn. a. 1403, n. 1 seq. 8. Hefele, p. 741 seq.
[9] Concerning this coronation, see Card. V. Petra Com. in Const. 5, Imperator. Nicol. V. t. v. p. 38 seq.
[10] Raynald. a. 1530, 1538. The Popes use the expression: 'In Romanorum imperatorem electus;' then, 'Electus [in contradistinction to coronatus] Romanorum imperator.' Thus Pius VI. in the Briefs to Leopold II. and Francis II. (Collect. Brev. Pii VI. Paris, 1798, pp. 557, 561).

Maximilian himself, in his letter in 1508 to the cities of the German kingdom (Daht, de Pace Publica, l. iii. c. vii. n. 30), tells them that he has taken the title of Roman emperor-elect in consideration of the right of the Pope over the coronation, and that his Holiness 'was well pleased' ('dess ein gut gefallen gehabt').

[11] Charles, as well as Frederick III., performed the 'officium stratoris,' although the Pope would have prevented it. Rayn. a. 1529, n. 84; 1530, n. 39. Thomassin, P. ii. l. iii. c. lxv. n. 9.

[12] Rayn. a. 1519, n. 27. Dumont, Corps Diplom. Univ. t. iv. P. i. p. 298. Gosselin, ii. p. 344 seq.

§ 16.

Besides his quarrel with Clement VII. before his coronation,[1] Charles V. had quarrelled with Paul III. This Pope has been much blamed[2] for having, especially at the commencement of his pontificate, been too solicitous for the elevation of his family (Farnese), and it was far from being the intention of the author of Anti-Janus to justify either his efforts for this end or all the measures by which he sought to compass it. Paul III. has also been reproached for faithlessness towards Charles V., with having broken the League of 1545 and 1546, with having conspired against him, with having in the spring of 1547 expressed his pleasure that Protestants were holding their ground against him, and with having found it well that they should be supported against him.[3] But on the other hand we must not forget (*a*) that the French reports[4] are anything but trustworthy, and (*b*) that the Pope had numerous and just grievances against the emperor. For (*a*) there is no doubt that French diplomacy not only sought in the Pope's conduct a justification of its own negotiations with German Protestants, but left no measure untried to dissolve the league between Pope and emperor, and explained and applied every action and every word to its own advantage. The Saxons and Hessians were repeatedly told by the French that a breach between Pope and emperor was inevitable, and that the former would soon be deprived of the means of carrying on war.[5] (*b*) Further, the Pope's grievances against the emperor were such as to render alliance with him very distasteful, and even to undermine all reliance upon Charles' sincerity.[6] As supreme Head of the Church it was impossible the Pope should permit Charles to assume the right

to decide and command in affairs relating purely to the Church,[7] as he had done in first thwarting, then ignoring and partially resisting, the decree on justification published at Trent (13th Jan. 1547), also in violently resisting the postponement of the Council, a measure agreed upon (11th March) by a majority of the prelates.[8] The emperor also made exorbitant claims as to the subsidy from Church property in Spain for the prosecution of the war. Even the Madrid government under Prince Philip protested, and Charles found it necessary to abate these claims in some measure.[9] Further, he refused to acknowledge the feudal dependence of Parma and Piacenza upon the Papacy, though it was attested by so many records. Also he suffered his new viceroy in Milan, Fernando Gonzaga, always an enemy of the Pope's family, to make constant war upon Pier Luigi Farnese, who was killed at last on the 10th September, not without the participation of Fernando.[10] Spanish ascendency in Italy was an oppression at that time as well as under Clement VII.[11] Paul III., both as Pope and as an Italian prince, accounted the exclusive power of Spain in the peninsula to be dangerous. 'Naples and Milan in the grasp of Spain was the destruction of Italian independence'.[12] The emperor was already laying his hand upon other domains in Italy.[13] He concluded treaties with the Protestants, and made concessions to them which increased the Pope's distrust and induced him to refuse new support.[14] Besides all this, notwithstanding his alliance with the Pope, he acted in the most arbitrary manner, and without so much as consulting his allies or their ambassadors.[15] The Venetians had declared that they would refuse passage through their dominions to the Papal troops.[16] Charles' violent and impatient demeanour and his threats of retaining the Council in Rome with an army must have largely contributed to the breach between him and the Pope.[17] If the Pope, when the fate of the war was already decided in the middle of November,[18] withdrew his troops,[19] it was under the circumstances a very comprehensible act. The Papal policy should not bear all the blame; certainly no lesser share should fall upon the emperor.

There can be no question of a breach of faith on the part of

the Pope, for his auxiliary troops had been granted only for six months, and this period had elapsed in December 1546, when he considered whether he should continue the league or not.[20] The Papal treasury was exhausted by the expenses of the Council, by the advancement of a hundred thousand ducats for the Turkish war,[21] and by the last equipment; whilst Charles had at his disposal not merely the considerable sums furnished by the Church in Spain,[22] but the heavy contributions levied from the conquered rebels.[23]

But as the war appeared likely to break out again between France and Germany, it became necessary for the Pope to take into consideration the protection of the States of the Church, for which material means were needed, and also the neutrality which the See of Rome, especially between 1525 and 1542, had often declared to befit her in a war between two Catholic princes.[24] The Pope for these reasons sent Gerone Bertano to the emperor, counselling him to keep peace with France; the envoy, detained by illness on the journey, reached Ulm, where Charles was, on the 27th January 1547. The emperor set forth his grievances with much violence, and showed himself by no means inclined to peace. The Papal envoy, however, was able to show good cause in justification of his master.[25] Even after disputes had arisen the Church made many concessions of subsidies to the emperor, and did things, especially with regard to the Council of Bologna, to prevent the conflict at least from increasing.[26] Even before the death of Paul III. better relations existed between Charles and the See of Rome. Charles at the end of his life had time to repent of his former wild impetuosity.

[1] Cf. Pallavicini, Hist. Conc. Trid. l. ii. c. xiii-xvi. Ranke, Päpste, iii. p. 241 seq.; i. 103 seq.

[2] Pallav. l.c. l. xi. c. 6, n. 4.

[3] Huber, p. 40 seq.

[4] Ribier, Lettres et Mémoires d'état, i. 637-639. The ambassador Dumortier often formed very wrong estimates of the Pope.

[5] W. Maurenbrecher, Karl V. und die Deutschen Protestanten, 1545-1555, Düsseldorf, 1865, pp. 133, 134 (note 18), 135.

[6] Maurenbrecher, l.c. p. 113.

[7] Ibid. p. 149. Cf. Döllinger, Beiträge, i. p. 60.

[8] Farnese's letters to Cervinus dated the 3d, and to the legates date

23d July 1546 (Pallavic. l. viii. c. v. n. 3-5), show that it is false that the Pope had long wished to dissolve or transfer the Council. On the 3d or 4th of August he first consented to the proposal, but with the condition that it should be if the majority of the Fathers willed and desired it. He also proposed the town of Lucca, which was quite submissive to the emperor, required that preliminary information should be imparted to the emperor, and that the discussion on the doctrine of justification and on residence should be terminated (ib. c. viii. n. 3). Only after he had learnt the manner in which his legates had been mortified by Madrucci, together with the wish of many bishops, did he show himself inclined to the translation; still he did not yet give way to the legates (c. x. n. 5; c. xv. n. 1 seq.). At the beginning of the year 1547, Paul, from consideration for the emperor, had not yet granted his consent (ib. l. ix. c. iii. n. 4 fin.).

[9] Maurenbrecher, pp. 123, 140, 152.

[10] Ib. p. 115 seq. 160 seq. Ranke, Päpste, i. 256 seq. Deutsche Gesch. im Zeitalter der Ref. vol. v. p. 11.

[11] Ranke, Päpste, i. 100 seq.

[12] Maurenbrecher, p. 114.

[13] Ib. p. 159.

[14] Ib. p. 128.

[15] Maffei to Cervinus, 4 Dec. 1546, 23 Feb. 1547. Pallavic. l. ix. c. iii. n. 1. Charles to Don Diego Hurtado de Mendoza, d.d. Ulm, 11 Feb. 1547, in Maurenbrecher, appendix v. 11, p. 86* seq.; ib. p. 128 seq. The memorial sent to Berallo. Pallavic. l.c. n. 5.

[16] Maurenbrecher, p. 124.

[17] Ib. pp. 54, 170, 171, especially note 6.

[18] Ib. p. 111.

[19] Charles to Mendoza, 11 Feb. 1547, where he says the Papal troops were of little service (ib. p. 89*).

[20] Pallavic. l. viii. c. i. n. 8; l. ix. c. iii. n. 1 seq. 5.

[21] Maurenbrecher, p. 64.

[22] Concerning such subsidies, vide Charles' letter to Philip, of 24th April 1546, in Döllinger, Beitr. i. p. 44. Charles demanded in Rome the secularisation of half the Spanish Church property, which could not have been granted (Maurenbrecher, p. 131 seq.).

[23] Pallav. l.c. n. 2. Maurenbrecher, pp. 127, 128.

[24] The Nuncio Rorarius to Sadolet, 14 Feb. 1525 (apud Lömmer, Mon. Vat. p. 22): 'Havendo SS. deliberato gerere se tamquam patrem omnibus communem e servar la neutralità (Maurenbrecher, p. 54; Pallavic. l.c.).

[25] Pallavic. l.c. n. 9, 10. Charles to Mendoza, 11 Feb. 1547 (Maurenbrecher, app. v. 11, pp. 86*-89*).

[26] Ranke, Deutsche Gesch. v. p. 115 seq.

§ 17.

But a fresh quarrel was occasioned by Charles' abdication. 'Paul IV.,' says Huber, 'regarded the abdication of Charles and the election of Ferdinand as invalid on the ground that the Popes

had removed the empire from the Greeks to the Germans, and possessed full supremacy over the imperium."[1] Certainly it must have appeared strange to the Pope that Charles should have entered into long negotiations concerning his abdication with the electors, amongst whom were some who employed menacing expressions towards the Church of Rome,[2] whilst he was not consulted; and that the abdication was delivered into the hands of the electors, not into those of the Pope.[3] It is true that Ferdinand was with the consent of the Pope recognised by the majority of the electors as 'King of the Romans,' with the right of succession to the empire;[4] but upon this he called himself 'Roman emperor-elect (erwählter),' whilst for the Pope, Charles V. was alone emperor. Paul IV. did not immediately receive Ferdinand's ambassador, Martin Guzman, and then only as a private individual, and proposed four questions for discussion to the cardinals: I. Whether the ambassador had to give the reasons for Charles' abdication; II. whether the abdication was valid without the consent of the Pope; III. whether the bad education of his son Maximilian ought to weigh against Ferdinand's recognition; IV. what course was to be adopted with regard to the heretical electors. The Sacred Congregation decided according to the existing law that the abdication was invalid, that it was the duty of the Pope to prevent any one who was incapable of defending the Church receiving a right over the empire, and that heretical electors were deprived of their office.[5] This decision was not arbitrary; it was founded upon the clear law of the decretals, which had been always acknowledged by earlier emperors, and whose validity no German had ever before disputed.[6] Although John Gropper, at that time living in Rome, advised making concessions, the Pope held firmly to the old law. On the death of Charles V., the 21st September 1558, he assumed that the empire had fallen vacant by death. Paul IV. is only open to the charge, often preferred against him,[7] of too great severity, and of an uncompromising adherence to the letter of the law; his successor, Pius IV., immediately received Ferdinand's ambassador,[8] not wishing to decide the matter according to strict law, for which Ferdinand I. expressed his gratitude."[9]

[1] Huber, p. 46.
[2] Ranke, Deutsche Gesch. v. p. 413 seq.
[3] Ranke, l.c. pp. 420, 421.
[4] Pallavic. l. iii. c. ix. n. 2, 3.
[5] Raynald. a. 1558, n. 8, 10. Pallavic. l. xiv. c. vi. n. 5-14. Bromato, Vita di Paolo IV. t. ii. p. 431. The individual motives, arguments, and votes are not the important thing, but the legal decision.
[6] Ranke, l.c. p. 422.
[7] Pallavic. l.c. c. xi. n. 1.
[8] Raynald. a. 1559, n. 42.
[9] Pallavic. l.c. c. xii. n. 1.

§ 18.

The Roman emperor, henceforward no longer 'crowned,' but 'elect,' had from that time scarcely any relations with the Holy See beyond those of other sovereigns. The empire had become a mere phantom. The election was always signified to Rome by the elected prince, and Rome always in return acknowledged it. Enfeebled and unmeaning, the empire after a life of a thousand years expired in the person of Francis II. in 1806, in consequence of the ascendency of the French and of the confederation of the Rhine. Sixty-four years later it revived not merely in a new guise, but with a new spirit and new foundations, in some sort a new creation. Time will show whether the new foundations are more lasting than the old. Would that in looking onward we might hope that the Ghibellines and the Guelfs had laid their arms down for ever, that those who so recklessly impugn the past would not more recklessly embroil the present and the future, and that the statesmen of these times would judge the Catholic Church by her deeds and her fruits, not by party-spirited perversions and misrepresentations of her doctrine!

ESSAY X.

THE POPES AND THEIR VASSAL KINGDOMS.

After the eleventh century many princes entered into feudal relations with the Church of Rome, and the rights of the Pope over such princes were much greater than over other rulers. He had not only an ecclesiastical, but also a temporal jurisdiction over them. The lord superior had the right to judge those princes who were his vassals, in any case of violation of fealty (felony) to depose them, and to give away to others the fiefs that escheated to him in these cases. The Popes in using their right of lord paramount to support their spiritual power acted in conformity with the general feeling of the Middle Ages, according to which the material sword served as an aid to the spiritual. The exercise of their power may appear frequently to have been imprudent, immoderate, even hard and oppressive; but there was no violation of law or usurpation of jurisdiction. We must not blame a judge who rests his judgment on the principles of jurisprudence prevailing in his time only because they do not find the same acknowledgment in our day. This principle is always recognised, except when in the case of the Popes. This is the less reasonable, as it was precisely the justice of their authority which caused their contemporaries most highly to esteem and most strongly to support it. To meet the complaints made on this subject against the Popes, we will consider the Papal fiefs—I. in Italy; II. out of Italy.

Part I. Papal Fiefs in Italy.

§ 1. Feudal connection of the South Italian kingdom with the Pope. § 2. From 1251-1282. § 3. From that time till 1302. § 4. Till 1372. § 5. Till the eighteenth century. § 6. Sardinia and Corsica. § 7. Parma and Piacenza.

§ 1.

The Normans in Lower Italy and Sicily were the first who entered into a feudal connection with the Church of Rome, and in spite of many vicissitudes this connection continued.[1] Calixtus II. received homage in 1121 from the nobles of Lower Italy.[2] Innocent II. recognised Roger as King of Sicily, July 27, 1139, on condition of his taking the oath of allegiance and paying a tribute.[3] As William II. (1154) caused himself to be crowned without application to the Roman See, Hadrian IV. protested, and at the peace of 1156 the king admitted his feudal dependence.[4] Under Clement III. (1187-1191) the question was discussed whether his heirs were to render allegiance to the Popes in every new pontificate, which, according to strict feudal law, could of course be demanded; the Pope, however, decided that the one act of allegiance was sufficient for each king.[5] Under the Emperor Henry VI. the kingdom passed to the house of Hohenstaufen. Innocent III., though guardian of the young Frederick, both protected the claims of his ward to the South Italian kingdom and the undisputed rights of suzerainty of the Church of Rome, and provided for a regular administration there.[6] The successors of Innocent interceded more than once with this tyrannical ruler for the oppressed people. When in the history of Frederick II. we are told that 'the Papal pretension to power was without any legitimate title and utterly exorbitant,'[7] the fact is entirely overlooked that the feudal subjection under which Frederick, as King of Sicily, stood to the See of Rome was in itself a very important and very legitimate title. A single breach of faith, such as Frederick himself committed by the hundred, would have sufficed in his eyes for the immediate degradation of any of his vassals.

[1] Baron. a. 1059, n. 70. Cf. Leo Ost. Chron. Cassin. iii. 12; Cenni Monum. Domin. Pontif. ii. 48 seq.; Urban. II. ap. Mansi, xx. 659.

[2] Jaffé, Reg. n. 5034, pp. 536, 537.

[3] Baron. a. 1139, n. 12. Mansi, xxi. 396. Jaffé, n. 5734, p. 588.

[4] Baron. a. 1156, n. 4, seq. Mansi, l.c. p. 801. J. n. 6941, p. 667.

[5] Mansi, xxii. 556. J. n. 10,279, p. 885: 'Haeredes tui, qui nobis vel alii successorum nostrorum juraverint, alii postea minime jurare compel-

lantur, Catholicis tamen successoribus nostris et hominii et fidelitatis puritatem, ac si juraverint, teneantur observare.'

[6] Raynald. a. 1198, n. 67. Innoc. III. l. i. Ep. 410-413 (Migne, ccxiv. p. 387 seq.); Ep. 507-515 (ib. pp. 510-521); l. ii. Ep. 167, 179 (ib. pp. 717, 729); Ep. 187, 200, pp. 736, 749; l. vi. Ep. 52-54.

[7] Huber, p. 35.

§ 2.

After the deposition of Frederick II. the kingdom of the Two Sicilies reverted as a vacant fief, even according to imperial law, to the Church of Rome; his successors had forfeited their right, and could only be readmitted as vassals by an act of favour. Innocent IV. also expressed this view in 1251.[1] In the mean time Conrad IV. came to Apulia in 1252, conquered many towns, behaved most ungratefully to his bastard brother Manfred, and most injudiciously to the towns which had allied themselves to the Church of Rome. In order to put a check to Conrad's further progress Innocent, as lord paramount, offered the Sicilian crown in the summer of 1253 to Prince Charles of Anjou; and as this came to nothing, to the English Prince Edmund, whose father, Henry III., accepted the offer, but then failed to send an army as stipulated.[2] When the Counts of Savoy and Montfort tried to effect an understanding between Conrad and the Pope, Innocent did not reject it; but Conrad died, May 20, 1254, before further negotiations could be brought about.[3] Being still quite free as to the disposal of this fief, the Pope, while reserving his rights, could still declare that he was inclined to show favour to Conrad's child when he should be of proper age, and already acknowledged him as Duke of Swabia and King of Jerusalem;[4] but he did not pledge himself to maintain the former Hohenstaufen provinces in Italy in their full integrity. Manfred in the mean time sought a reconciliation with the Pope, acknowledged his overlordship, and was confirmed as viceregent of Lower Italy. However, shortly after he faithlessly renewed hostilities, and Innocent IV. soon died.[5] His successor, Alexander IV., revived the negotiations with England, but without better result; he also wrote to the mother and grandmother of Conradin, telling them of the favourable dispositions he enter-

tained towards him: his object was to find a faithful vassal and neighbour, well disposed towards the Church, and competent for the position. He was obliged to interfere against Manfred, who had already proved faithless, and was even now (1258) being crowned king at Palermo, and so sorely pressing the Pope that another nomination to the fief was becoming an urgent necessity.[6] Urban IV., in many difficulties, and pressed by the creditors of the Papal States, did not by any means refuse to be reconciled with Manfred, but the proposals of peace made by the latter were of such a nature that the Pope, straitened on all sides though he was, could not accept them.[7] At that time England was torn by civil wars, and Edmund was not in a position to undertake the kingdom of Sicily; he soon resigned his claims to it, and on July 28, 1263, Urban declared them extinct.[8] He then turned his attention to France, and Charles of Anjou, brother of St. Louis, accepted the proposal, urged thereto by his own ambition and by his wife, Beatrix of Provence. St. Louis at first hesitated. The King of England had besought him to use his interest for his son Edmund, and he imagined that after Conradin, Edmund had the best claim. But the Pope represented to him that the former had no right on account of the felony of his grandfather, and the second on account of his having failed to fulfil the accepted conditions. Louis then gave his consent, and even allowed a tithe to be levied on the clergy, in order to help his brother to take possession of his throne.[9]

Almost the whole of Italy was at that time in the hands of Manfred, so much so that Cardinal Guido Fulcodi, elected Pope under the name of Clement IV., February 5, 1265, could only travel through Italy in the dress of a simple monk. Charles came to Italy in this year (1265), and after the confirmation of the Papal overlordship was crowned king (January 6, 1266). Manfred's army was overcome, he himself killed in battle. But the Roman See was cruelly deceived in the wicked brother of St. Louis. In Rome he acted in an arbitrary manner, levying heavy contributions on the Papal States, allowing many outrages to be committed by the troops. Clement IV. had bitter cause to com-

plain of his tyranny.[10] It must be acknowledged, says Raumer,[11] that this Pope supported him most laudably and persistently in all good, and candidly blamed his faults. Huber indeed tells us, 'No advocate of Papal politics can clear Clement IV. of a moral participation in the execution of Conradin at Naples (Oct. 29, 1268)'![12] But the Pope acted only according to strict justice when, after first earnestly warning, he excommunicated Conradin, who since 1262 had been unopposed Duke of Swabia,[13] but since 1266 had acted as King of Sicily, and in 1267 had, in spite of the dissuasions of his nearest relations, undertaken his adventurous expedition to Italy, which was very dangerous for the Papal States. The Pope urged Charles of Anjou to be merciful, and it was not his fault that his admonitions were disregarded;[14] it grieved him bitterly. In many other cases he experienced similar mortifications.

[1] Raynald. a. 1251, n. 11. Cf. a. 1253, n. 2.
[2] Lingard, Hist. Eng. vol. ii. pp. 420, 421, 5th edit. 1849.
[3] Hefele, Conc. vi. p. 3 seq.
[4] Raynald. a. 1254, n. 46, 47. Raumer, Gesch. der Hohenstaufen, iv. 352.
[5] Hefele, vi. p. 7.
[6] Hefele, vi. p. 13 seq.
[7] Hefele, vi. p. 14.
[8] Rymer, Foed. i. 769. Lingard, p. 425. Pauli, iii. p. 758 seq.
[9] Daniel, Hist. de France, t. iv. a. 1264, 1265. Velly, Hist. de France, t. v. p. 328. Michaud, Hist. des Croisades, t. v. p. 42.
[10] Martene, Thes. ii. 136, 172, 267, 298, 306. Raynald. a. 1266, n. 7, 9.
[11] Gesch. der Hohenstaufen, iv. 565.
[12] Huber, p. 84.
[13] Böhmer, Reg. v. 1196 seq. p. 283 seq.
[14] Rayn. a. 1268, n. 32 seq. n. 86.

§ 3.

The 'Sicilian Vespers' (March 31, 1282) were a result of the hard yoke laid by Charles I. of Anjou upon his new subjects. After the expulsion of the French, King Peter III. of Aragon, who had married Manfred's daughter Constantia, was chosen and crowned King of Sicily. Charles could only maintain the territory north of the Faro. Pope Martin IV. excommunicated

King Peter, and forbade the single combat that had been agreed upon. As Peter despised the censure, he issued a fresh severe edict against him, at the same time dispossessing him of the kingdom of Aragon, which he offered to the French Prince Charles of Valois.[1] He made use of his spiritual power as Pope to release Peter's subjects from their oath of fidelity, and of his temporal power as lord superior in endeavouring by every means to protect his vassal Charles in Naples. Peter, however, was left conqueror in the struggle with Naples and its allies; the eldest son of Charles of Anjou, afterwards Charles II., was captured by the Aragonese.[2] During this time Pope Honorius IV. (1285 till 1287), as lord superior, published wise laws for the continental territory of the kingdom, which, after the way the people had been oppressed, afforded them great relief.[3] Nicholas IV. also sought in vain to induce the Sicilians to return to the authority of the dynasty of Anjou, and in vain urged James II., Peter's second son, crowned at Palermo in 1286, to renounce the crown of Sicily. When, by the death (1291) of his elder brother, Alphonso III., James II. succeeded to the throne of Aragon, the third brother, Frederick, took possession of the island, and was crowned, in spite of the treaty concluded between his brother in Aragon and Charles II. After this (1302) peace was made, and it was agreed that Frederick, by a marriage with Eleanora, daughter of Charles II., should remain for his life king in Sicily. Boniface VIII. ratified the peace, and arranged that Frederick should be called King of Trinacria (to avoid confusion of titles), and should remain a vassal of the Church of Rome.[4]

[1] Raynald. a. 1283, n. 15; a. 1284, n. 2 seq.
[2] Hefele, vi. p. 190.
[3] Rayn. a. 1285. Lunig. t. ii. Cod. Diplom. Ital. p. 1023. Giannone, Istoria Civile del Regno di Napoli, t. v. l. xxi. c. i.
[4] Raynald. a. 1303, n. 3 seq. n. 25. Hefele, p. 256.

§ 4.

Soon afterwards dissensions again arose between King Robert of Naples and Frederick of Trinacria, of whom the former

was on the side of the Guelfs,[1] the latter of the Ghibellines.[2] John XXII. excommunicated Frederick and laid the island under an interdict, 1321, because the king refused all peaceful mediation. After the death of Frederick, his son, Peter II., took upon himself the government of the island, contrary to former agreement, and disregarded the censures of Pope Benedict XII., who therefore, in 1339, declared his authority to be forfeited and Trinacria an escheated fief. Nevertheless the house of Aragon succeeded in asserting its authority. After the death of the wise King Robert of Naples (1343), his granddaughter Joanna succeeded. She had married her cousin, the Hungarian Prince Andrew, who soon became odious to her and to her court, and was at last murdered at Aversa in 1345. As Joanna was suspected of participation in the murder, her brother-in-law, King Louis of Hungary, demanded her deposition by Pope Clement VI. But Clement, having anathematised the murderers and ordered a strict inquiry, could not agree to this without further evidence; therefore the King of Hungary came down with an army on to the kingdom of Naples, and made such progress that Joanna fled by sea to Nice, January 13, 1348. At Avignon she justified herself completely in consistory, and was recognised as lawful queen.[3] As the tyranny of Louis excited the Neapolitans to revolt he soon returned to Hungary, and she maintained the possession of her kingdom and sold Avignon to the Pope,[4] for which Charles IV., as lord superior of the kingdom of Arles, gave his permission. After a fresh expedition by King Louis (1350) and a fresh inquiry into Joanna's guilt, a peace, ratified by the Pope, was concluded between Hungary and Naples.[5] At last under Pope Gregory XI., 1372, an understanding was brought about between the courts of Naples and Palermo. The Aragonese conquest was recognised as well as the separation of Sicily from Naples. The conditions of the separation of the kingdom of Trinacria from that of Naples were that the rulers of the former were to be arrière vassals of the Pope and the immediate vassals of the King of Naples, rendering to them feudal support and paying a yearly tribute of 3000 ounces of gold.[6]

[1] Robert always acknowledged his feudal dependence upon the Holy See (Raynald. a. 1335, n. 47 seq.).

[2] Hefele, vi. p. 489.

[3] Hefele, vi. p. 585 seq.

[4] Christophe (Hist. of the Papacy in the Fourteenth Cent. ii. doc. 4, 5) gives the documents.

[5] Christophe, ii. b. vii. pp. 83-110 (Germ. ed.).

[6] Raynald. a. 1372, n. 3. Christophe, l.c. 306 seq.

§ 5.

The feudal dependence of the South Italian kingdom on the Papal See was acknowledged until the eighteenth century, and regular payment generally made of the feudal tribute agreed upon after the treaty of 1268 with Charles of Anjou. Pius II., 1458, acknowledged Prince Ferdinand as king; Julius II. granted the investiture to King Ferdinand of Aragon; Leo X. to Charles V.; Julius III. to Philip II., son of Charles V., the conditions being always the same. The latter took the oath of allegiance at Brussels, October 1, 1555. Philip III. of Spain took it for Naples through his ambassador, 1599, under Clement VIII.; Philip IV., 1621, under Grègory XV. Marianne of Austria, mother and guardian of Charles II., caused homage to be rendered for him by Cardinal Frederick Sforza, 1666, to Pope Alexander VII. In the War of the Spanish Succession both Philip V. and the Archduke Charles wished to pay tribute and take the oath of allegiance; Clement XI. accepted nothing from either side till the end of the struggle. Innocent XIII. afterwards conferred the investiture on Charles VI. for the usual tribute of 7000 ducats and a white palfrey (1722). When afterwards Charles of Bourbon came into possession of the country and paid homage through Cardinal Aquaviva, Clement XII. bestowed the investiture upon him on May 10, 1738, with the remission of the long-unpaid tribute, and with the reservation of his right of lord-superior.[1] The payment of the tribute was discontinued under Ferdinand IV. and his violent minister Tanucci, who even seized the Papal enclaves Benevento and Pontecorvo, and only restored them in 1774.[2] The Concordat of 1791 was never carried out; it stipulated for an alteration in the payment of the tribute[3] in the

stormy years that followed this payment was almost entirely discontinued. Joachim Murat again, in 1815, submitted to this contribution, but soon after declared war. King Ferdinand, when reinstated as 'King of the Two Sicilies,' would not hear of feudal subjection. Since the year 1816 the See of Rome protested against this breach of ancient obligation, which had been acknowledged by Ferdinand himself in 1806.[4]

[1] Clem. XII. Const. 233, *Ad excelsum*, Bull. t. xv. pp. 189-194, with complete enumeration of historical data (Artaud, Vie de Pie VII. vol. ii. 2, cap. xxii.).

[2] Theiner, Hist. du Pontificat de Clément XIV. t. i. pp. 345, 346, n. 36 seq.; t. ii. p. 467.

[3] Moroni, Dizionario, v. Concordato, t. xvi. p. 39.

[4] Artaud, l.c. chap. xxix. xxxii. xxxiv.

§ 6.

The Popes moreover asserted their old feudal right over the islands of Corsica and Sardinia.[1] In the year 1297, Boniface VIII. bestowed both these islands on King James of Aragon as Papal fiefs, thereby inducing him to relinquish Sicily, upon which his brother Frederick took possession of it; the Pope in this case expressly stipulated for the freedom of ecclesiastical elections.[2] Under Benedict XII., King Alphonso distinctly acknowledged that he received these islands as a fief from the Pope.[3] When, according to the conditions of the Quadrupal Alliance of 1718, Victor Amadeus II. of Savoy received the kingdom of the island of Sardinia, the Roman See asserted its right, and did not acknowledge the new ruler to be entitled to the exercise of any patronage such as formerly the Spanish kings had possessed.[4] In the negotiations with Rome in 1725 the court of Turin asserted that Victor Amadeus as a descendant of Charles V.[5] ought to be ranked in the same line as the Spanish King Philip V., and being therefore included in the succession of Aragon and Sardinia required no investiture; that as to the clause of the union of Sardinia with the Aragonese crown, the Pope in his new Indult could either modify it or, in surrendering the clause, make a protest defending the rights of the Holy See; that the court would be prepared with a counter-protest, but would be

to accept any equitable arrangement. The cardinals resisted the acknowledgment of the new king—first, because the interference of two heretical powers (England and Holland) was very offensive to them; and secondly, because it appeared to be a favourable opportunity for the renewal of the Papal right and for the attainment of greater compliance in ecclesiastical matters. The Republics of Venice and Genoa sided with the cardinals, as it was extremely disagreeable to them to have an Italian prince raised to the dignity of a king. Mgr. Lambertini (afterwards Benedict XIV.), who was very popular at foreign courts on account of his liberality and love of peace, had to overcome many objections at Rome before the Indult for the right of presentation was granted to the king and his successors, October 25, 1726, the other rights of the Holy See being reserved. The crafty diplomatist D'Ormea obtained great concessions from Benedict XIII. for the Sardinian court.[6] There were also Papal fiefs in the continental possessions of the king: for instance, Alessandria, which had been built in honour of Alexander III. and had always been subject to the Holy See;[7] also the principality of Masseran and the marquisate of Crevacour, which had been restored to the Papal See in 1658 by the family of the Fieschi, who had had possession of it since 1394.[8] Alexander VII. accepted the restitution, 1659, and in 1661 forbade the alienation of this property, enlarging the Bull of Pius V. against alienation of property from the Church of Rome.[9] When, after this, Prince Charles Bassi-Ferrari-Fieschi sold this estate, without the consent of the Roman See, to Victor Amadeus II., who was then duke, Innocent XI. as lord superior declared the sale null and void, February 26, 1686.[10] Considerable contentions arose, and for a long time all efforts at arrangement were fruitless. At last the dispute was adjusted by Benedict XIV., 1741; he adopted a plan formerly entertained of conferring an apostolic vicariat *in temporalibus* on the King of Sardinia under certain conditions, viz. of rendering homage and presenting a gold chalice worth 2000 scudi every year on the feast of St. Peter, which continued to be the custom till the French Revolution.[11]

[1] Innocent III. says of Sardinia: 'Tota Sardinia dominii juris et proprietatis Apostolicae Sedis existit.' Ap. Raynald. a. 1200, n. 49, l. iii. Ep. 35, pp. 917, 918 (to the judex of Cagliari, whom he reproaches with his crimes and calls to account, at the same time commissioning the bishops to this effect). Ib. Ep. 36, p. 918, l. v.; Ep. 124, 125, pp. 1126-1128; l. vi. Ep. 29, p. 31: 'Cui (Rom. Eccl.) tam in spiritualibus quam in temporalibus est subjecta.' Cf. Ep. 30, p. 32; l. vii. Ep. 109, p. 391; l. ix. Ep. 63, p. 876. Rudolph I., 1274, also acknowledged Corsica and Sardinia to be possessions of the Holy See (Pertz, Mon. Germ. iv. 403, 404).

[2] Raynald. ad a. 1297, n. 2. Mariana, de Rebus Hisp. l. xiv. c. xiv. n. 17. Thomassin, P. ii. l. ii. c. xxxvii. n. 5.

[3] Raynald. ad a. 1335, n. 39.

[4] Carutti, Storia del Regno di Vittoria Amadeo II., Turino, 1856, p. 105. Rigant. in Reg. ii. Canc. § 1, n. 20, t. i. p. 209.

[5] Katherina, sister of Philip III. of Spain, married Duke Charles Emmanuel of Savoy (1580-1630), who was great-grandfather of Victor Amadeus II.

[6] Carutti, l.c. pp. 412-415 seq. 427 seq. 483 seq.

[7] For the documents see Ughelli, Italia Sacra, t. iv. p. 442; Migne, PP. Lat. ccxv. 621. Cf. letter of Innocent III. of 1206, l. ix. Ep. 93 (ib. p. 910).

[8] Moroni, Dizionario, v. Masserano, t. xliii. pp. 237, 238.

[9] Alex. VII. Const. Cum sicut, May 8, 1659; Const. Inter, Feb. 1, 1661 (Bullar. Rom. vi. v. p. 1 seq. 127).

[10] Innoc. XI. Const. Cum sicut, Bull. viii. 381 (al. xi. pp. 481-483, Const. 149).

[11] Carutti, Storia del Regno di Carlo Emanuele III., Torino, 1859, vol. i. pp. 153, 154. Docum. n. 3, pp. 347-352. Moroni, l.c. p. 238.

§ 7.

Parma and Piacenza were also among the Papal fiefs; in 590 they had become united to the exarchate of Ravenna, and with it became part of the Papal States, and afterwards devolved once more upon the Roman See with the rest of Matilda's inheritance.[1] On the 6th August 1545, Paul III. gave these duchies as a Papal fief, in exchange for a yearly tribute of 9000 ducats, to his son Pier Luigi Farnese, born before he entered holy orders, and after him to Pier's son Ottavio. The Farnese took their oath of allegiance, and, after the acknowledgment of Philip II. in 1552, remained in undisturbed possession.[2] At the beginning of the Spanish War of Succession, Duke Francis Maria mounted the Papal arms for greater security from the belligerents. When in 1707 the emperor's party declared Parma an imperial fief, laid it under contribution, and oppr-

the clergy, Clement XI. (August 1, 1707) issued severe decrees against the usurpation.[3] The house of Farnese expired with Duke Antonio, January 20, 1731, when Clement XII. declared that if the widowed Duchess Henriquetta should die without male heirs the country would revert to the Holy See, according to the law of investiture made by Paul III.[4] Germany and Spain, however, strove for possession. The Infant Don Carlos, son of Philip V. of Spain, and Elizabeth Farnese, niece of the last duke, received the duchy, and later (in 1735) the kingdom of Naples. The peace of Aix-la-Chapelle (October 18, 1748) assured the duchy to him and his male heirs, on condition that if ever he ascended the Spanish throne he should cede it to his brother Philip. The rights of the Roman See were totally despised, and the power of protesting was all it now possessed. On the death of Duke Philip (July 18, 1765), and during the minority of his son, W. du Tillot conducted the government and made many laws inimical to the interests of the Church. The bishops expostulated, and Clement XIII. as lord superior declared the laws void and issued a severe admonition (1768), which excited the greatest anger in the Bourbon courts.[5] History shows after what fashion these were really good 'Catholic' courts at that time; they treated the Roman See worse than any non-Catholic States, and oppressed Clement XIII. till he died.[6] His successor, Clement XIV., ended the dispute by granting a dispensation to the young duke for his marriage with Maria Amalia of Austria, and without entering upon what had gone before, appearing tacitly to retract the past.[7] Later events, such as the dethronement of Duke Ferdinand and the French occupation, forced the questions of right more and more into the background; but every year on the feast of St. Peter the solemn protest was renewed in Rome.

[1] With regard to this inheritance, Innocent II., 1133, without renouncing his right, had been very compliant to Lothair II.; Hadrian IV. demanded it back in 1159 from Frederick I., who at last, in 1176, promised Alexander III. to return it, but in later negotiations endeavoured to evade his promise (cf. Hefele, v. 375, 495, 620, 622, 629, 643). Innocent III. successfully made good his right to the Tuscan territory. L. i. Ep. 15, p. 14, he writes: 'Cum ducatus Tusciae ad jus et dominium Ecclesiae Ro-

manae pertineat, sicut in privilegiis Rom. Eccl. oculata fide perspeximus contineri, nullam inter se sub nomine societatis colligationem facere debuissent episcopi et consules civitatum Tusciae, nisi salvo per omnia jure pariter et auctoritate SS. Rom. Sedis.' L. vii. Ep. 64, p. 344, he commissions the Bishop of Mantua to take possession, for the Roman See, of those portions of Matilda's inheritance which were within or on the borders of his diocese.

[2] Nicholi, Dissert. istorico-politica e legale sopra la natura e qualità delle città di Parma e Piacenza. Ragioni della S. Sede sopra il ducato di Parma e Piacenza. Della istoria del dominio temporale della Sede Ap. nel ducato di Parma, Roma, 1720. Theiner, Hist. du Pontificat de Clément XIV. t. i. p. 114 seq. Moroni, v. Parma, t. li. pp. 212 seq. 222 seq.

[3] Carutti, Vittorio Amad. II. c. xiii. p. 209; c. xvii. pp. 280, 281.

[4] Const. 39, Cum bonae, Bull. ed. Lux. xiv. pp. 154, 155.

[5] Theiner, l.c. p. 115 seq. Moroni, l.c. p. 232 seq. The hatred of these courts had reached to such a height at that time that the life of the writer of the admonition, Mgr. Antonelli, who was made later a cardinal-deacon, was sought after. The hired assassin, however, murdered another prelate, by name Mgr. Antonelli Velletri, whom he mistook for the other. Pacca, Memorie Storiche, P. ii. c. ii. pp. 160, 161, ed. 1830. Several of Du Tillot's decrees may be found in Münch. Conc. i. 498 seq.

[6] Cf. R. A. Menzel, Neuere Gesch. der Deutschen, xi. pp. 453, 455.

[7] Theiner, l.c. pp. 286, 287.

Part II. Papal Fiefs out of Italy.

§ 1. Question as to feudal dependence of the Spanish kingdoms. § 2-4. England. § 5. Magna Charta. § 6. Scotland. § 7. Other tributary kingdoms. § 8. Kingdoms under the protection of St. Peter. § 9. Conduct of the Pope with regard to feudal subjection. Clement V. and Venice. § 10. The losses of Rome in land and power.

§ 1.

It is much to be doubted whether Portugal was ever really in feudal connection with the Apostolic See. Even supposing that Innocent III. had called it a tributary kingdom, and had placed it under his own and St. Peter's protection, still that shows no kind of feudal relation between them; tribute can be paid freely and out of devotion, not necessarily only from a vassal.[1] Neither is it any proof that Innocent IV. appointed a regent to the kingdom, as the appointment can be explained on other legal principles, and in the decree itself there is no mention of feudal relations.[2] As far as Aragon is concerned, we know that Peter II. of Aragon was crowned in 1204 by Inno-

cent III., that he made his kingdom subject to the Apostolic See, and paid a yearly tribute.[3] At the same time it is very much disputed whether the tribute and the dependence were of a feudal nature.[4] The oath which the king took at his coronation was only a simple oath of fidelity. The annual tribute might be intended as an expression of the king's religious dependence. The feudal dependence of the King of Aragon was only mentioned by Innocent III. with regard to certain castles.[5] After the revolt of the Sicilians against Charles of Anjou, in 1282, Martin IV. excommunicated King Peter III. of Aragon, who had seized the throne, deprived him of both kingdoms, and made over Aragon to Philip the Bold, for one of his sons. Philip accepted it, and sought to make good his right at the head of an army. With regard to Sicily, the Pope acted as lord superior; some historians[6] have asserted that he also acted thus in regard to Aragon; others[7] deny this. He by no means acted 'as using a divine right,'[8] but appealed mainly to the fact that the King of Aragon was specially bound to fidelity to the Apostolic See.[9] He pronounced those who despised his condemnation to have forfeited all the lands, fiefs, and rights which they derived either from the See of Rome or from any other sees, but not all their possessions in general.[10] He thus resisted a revolution, and the deposition of a legitimate prince, with all the weapons left at his command; if in any way he overstepped the limits of moderation, it is open to any one to blame him; even an 'Ultramontane theologian' can do so without danger of offending against a dogma; but in itself this struggle was perfectly just. The feudal relations of the Spanish peninsula with the Roman See only concerned particular places; if they were more extended, it was only for a time and by single rulers.

[1] Aug. Barbosa (J. U. D. Lusitanus), de Officio et Potestate Episcopi, P. i. tit. 3, c. ii. n. 64 seq. ed. Romae, 1623: 'Devotionis causa, solum ut tamquam Christi milites devoti et grati sub illius utpote ejusdem vicarii protectione militarent et Maurorum expulsioni et Christianae fidei propagationi incumberent.'

[2] Innoc. IV. c. ii. de Suppl. Neglig. Prael. i. 8, in 6.

[3] Innoc. Reg. xvi. Ep. 87. Raynald. a. 1204, n. 71, 72. Fleury, t. xvi. l. lxxvi. n. 10. Thomassin, P. iii. l. i. c. xxxii. n. 8. Hurter, Innocenz III. i. p. 598.

[4] J. D. Mansi, note in Natal. Alex. H. E. saec. 13 et 14, c. i. a. 4, pp. 43, 44, t. xv. ed. Bing. Phillips (Kirchenrecht, v. § 236, p. 556), however, supposes distinct feudal relations.

[5] L. viii. Ep. 97, p. 667, a. 1205. The Papal legates are commissioned to bestow upon this king personaliter *in feudum* the castrum Scurae, which he had reconquered from the heretics: 'Ita tamen quod ex eo fidelitatem Ecclesiae Romanae faciat et in recognitionem, quod ejusdem castri proprietas ad jus B. Petri pertineat, certum censum statuat solvendum nobis nostrisque successoribus annuatim.' Cf. l. ix. Ep. 103, p. 916.

[6] Zurita, Ind. rer. ab Arag. Reg. gest. h.a.: 'XI. Kal. April. Martinus P. M. Urbe Veteri de Collegii sententia Petrum Ar. uti Ecclesiae subditium et perduellionis convictum regno ac ditionibus omnibus mulctat.' Natal. Alex. saec. 13 et 19, c. i. a. 4, p. 64. Fleury, Hist. Eccl6s. t. xxiii. l. lxxviii. n. 10, 19. Daniel, l.c. t. iv. a. 1283. Velly, t. vi. p. 386.

[7] Mansi, note in Natal. Alex. H. E. saec. 13 et 14, c. i. a. 11, p. 43.

[8] Janus, p. 15.

[9] Specialiter Sedi Apostolicae fideles et obnoxios teneri.

[10] Natal. Alex. l.c. p. 64.

§ 2.

The manner in which England became a Papal fief under Innocent III., and the means by which it was effected, have led to many complaints against this Pope. In 1206 he decided the dispute which had arisen shortly before, about the right of election for the primacy of Canterbury, in favour of the monks (canons) who lived there, and against the bishops; and Stephen Langton, having been elected on his recommendation, was consecrated by him at Viterbo in 1207. King John was indignant at this, because he had wished to raise the Bishop of Norwich to the archiepiscopal see: he drove the monks from Canterbury, seized their goods, and forbade the reception of the new primate.[1] The Roman See had always treated him with great consideration, but he was more defiant and regardless of her than any other prince of his time.[2] The Pope charged the English bishops to lay the country under an interdict if John remained obstinate. The Bishops of London, Ely, and Worcester pronounced the interdict over the whole of England in March 1208, and subsequently fled to France, where Archbishop Langton also was staying.[3] Most of the clergy strictly observed the interdict,[4] which caused John to take more violent measures against the clerical power; and in 1209, Innocent excommuni-

cated him by name.[5] The endeavours which the Pope made to reconcile the king with the Church were fruitless. In 1211 an insurrection broke out, which John suppressed with shocking cruelty. At last, in 1212, Innocent released John's subjects from their oath of allegiance, and opened to the King of France a prospect of the throne of England in case John did not submit.[6] After all we have not the text of the Papal condemnation, and Matthew Paris, often quite untrustworthy, is our only source of information.[7] Philip Augustus resolved on a war with John, who soon found himself in great difficulties. On the 13th May 1213, at Dover, he swore to submit to the Pope's judgment, and despatched ambassadors to him with letters.[8] Stephen Langton, the persecuted bishops, clergy, and laity, received security and compensation for their losses; the crowns of England and Ireland were surrendered to the Pope as lord superior, with the promise of a yearly tribute.[9] After this any attack on England by the French king was forbidden by the Pope. A moment's thought would make this appear quite natural,[10] and in no way 'a breach of faith' with France.[11] If the Pope had refused to be reconciled with a king ready to submit to the Church and make satisfaction, then he would have deserved just blame, and would have been guilty of arbitrary tyranny. The object of ecclesiastical censures was the correction of offenders: if ineffectual, then, as a last measure, release from the oath of fealty and deposition, or rather (as it was not irrevocable) suspension from government, was added: the censures and their consequences ceased when they had attained their object, the amendment of offenders. This was how Innocent III. understood it, and plainly showed his object[12] by giving John the title of king even after he had censured him.[13] Ranke says very truly, that 'as soon as the Pope was acknowleged as lord superior, not only must all hostility cease, but it became his duty to take the kingdom under his protection.'[14] It was known also in France that the Pope only intended Philip Augustus to take permanent possession of the country if John remained obdurate;[15] if Innocent had ceded it *unconditionally*, we must have admitted that he did not act for

the good of the Church in England, or in a way to insure its stability. The proposed feudal sovereignty, which, moreover, had been temporarily acknowledged by Henry II.,[16] gave the Pope the means of protecting the dioceses and the subjects from any heavy oppression, and beyond the payment of the tribute was hardly at all felt.[17] Edward II. afterwards acknowledged himself to be a vassal of the Roman See,[18] while Richard II. denied the feudal subjection.[19]

[1] Hefele, Conc. v. pp. 645, 725-727. Lingard, Hist. Eng. ii. p. 316, 5th edit. 1849.

[2] Innoc. III. l. x. Ep. 219, p. 1328: 'Cum nos in tali casu tantum honorem nulli principum detulerimus, quantum tibi, tu nostro tantum derogare attendis honori, quantum in simili casu nullus princeps derogare praesumpsit.' Cf. l. xi. Ep. 87, 89, 90, 91, p. 1403 seq.; Ep. 141, 211 seq. pp. 1455, 1526 seq.; Ep. 221, 223, p. 1535 seq.

[3] Innoc. III. l. ix. Ep. 84 seq. 205, 206; l. x. Ep. 113, 159 seq. Acta Innoc. n. 132 (Murat. Rer. it. Scr. xiii. 561). Rigord. in Gest. Phil. Aug. a. 1212. Lingard, l.c. pp. 317, 318.

[4] The terms of the interdict in the Supplem. ad Innoc. III. Epist. n. 136 (Migne, t. ccxviii. p. 190).

[5] Innoc. l. xii. Ep. 57.

[6] Hefele, p. 728. That it was proposed actually to depose the king is disputed by Natal. Alex. H. E. saec. 13, c. i. a. 1, n. 13.

[7] Bossuet (P. i. l. iii. c. xxi. p. 317) also can only refer to Matthew Paris (a. 1212, p. 232), who no more gives the actual words of the judgment than of the letter to the French king.

[8] Raynald. a. 1213, n. 74.

[9] Rymer, Foed. i. 1, p. 129.

[10] Hefele, l.c.

[11] In July 1215, Innocent expressly called upon the French king to attend to the warnings of the Cardinal-bishop of Tusculum, who had been sent to England, and to reëstablish peace with King John (l. xvi. Ep. 83, pp. 884, 885).

[12] In the letter of Aug. 15, 1215. The Pope's letter refutes the account given by Paris that John had taken the oath of allegiance 'juxta quod Romae fuerat sententiam.'

[13] L. xv. Ep. 234, p. 772 seq.

[14] Engl. Geschichte, i. p. 66. He also remarks: 'It appears, moreover, that in the beginning the barons approved the act of the king, though they did not give a formal approval. They asserted that they had risen for the rights of the Church, and looked upon the Pope as of their party.' This is corroborated by the passage in Rymer, i. 185; Innoc. l. xvi. Ep. 77: 'Communi consilio baronum nostrorum.'

[15] Rigord (properly his continuator, William Brito), Gest. Phil. Aug. a. 1213: 'Causa, quae Philippum regem magnanimum moverat ad hoc, ut vellet in Angliam transfretare, fuit, ut episcopos, qui diu a sedibus s-

ejecti in regno suo exulabant, suis Ecclesiis restitueret, ut *divinum servilium*, quod jam per septennium in tota Anglia cessaverat, *faceret renovari* et ut ipsum regem Joannem .... *vel poenae condignae subjiceret vel a regno prorsus expellens* secundum agnominis sui interpretationem omnino *efficeret sine terra*.'

[16] This king wrote to Alexander III.: 'Vestrae jurisdictionis est regnum Angliae et quantum ad feudatarii juris obligationem vobis dumtaxat obnoxius teneor et adstringor' (Baron. a. 1173, n. 10). Cf. Hefele, l.c. pp. 612, 613; Thomassin, P. iii. l. i. c. xxxii. n. 4. Cf. Vita Alex. III. ap. Murat. R. J. Scr. iii. 1, pp. 462, 24. Cf. Innoc. III. l. xvi. Ep. 79-82, p. 881 seq. Matthew Paris (a. 1215) himself recounts the vain hopes which were at that time generally raised by this step: 'Speraverant omnes et singuli, Angliam quasi Aegyptiaco jugo .... liberatam pace et securitate gaudere,' &c. He says (a. 1216) of the barons complaining of the rex tributarius: 'Peccantes inexpiabiliter, cum scriptum sit: Principi non maledices .... cum Deo servire regnare sit.'

[17] Thomassin, l.c. c. xxxii. n. 5.

[18] Eduardi II. Diplom. ap. Raynald. a. 1316, n. 24.

[19] Richard II. in 16; Richard III. c. v. Brun's Eccles. Can. s.v. Supremacy.

§ 3.

After King John was absolved from the ban of excommunication, and the interdict had been withdrawn, he endeavoured to regain the English possessions on the Continent, but unsuccessfully, and a truce of five years was concluded.[1] Soon, however, John was threatened at home, for on his refusal to grant the privileges bestowed by Henry I. upon the barons, they joined together, and took up arms to recover them. In 1215 they forced from him the confirmation of their liberties, the so-called *Magna Charta libertatis;* and when John appeared to be going to abolish this, they again threatened him.[2] The king appealed to the Pope. 'The rebellious nobles discovered that the Pope was not only ready to protect the king, his feudatory, against foreign attacks, but also against civil agitations.'[3] The unruly barons sent Eustachius de Vescy, the most distinguished of their number, to Rome, to gain the Pope to their side, acknowledging him positively as the lord of England.[4] When the Pope decided against them they did not yield, but, on the contrary, chose Prince Louis of France as king. The Pope endeavoured to persuade Philip Augustus to prevent the departure of his son for England;[5] however, Prince Louis entered

London, and was excommunicated by the Papal legate.[6] Innocent III. died at this time (1216), and King John also in the same year.[7] His son and successor, Henry III., found the Papal protection very useful in the early days of his reign: peace was concluded with the French Prince Louis, who subsequently applied for and obtained from the mild Honorius III. the repeal of the Papal Brief issued against his expedition.[8]

[1] Hefele, pp. 728-732.

[2] What Paris says about John's delay from May 1215 contradicts the documents apud Brady and Rymer (Lingard, ii. p. 361, n. 3).

[3] Ranke, l.c. i. p. 68.

[4] Maucler, Literae de Negotio Baron. ap. Rymer, Foed. i. 185. Ranke, i. 69: 'Magnates Angliae—instanter D. Papae supplicant, quod cum ipse sit dominis Angliae, vos—compellat, antiquas libertates suas—eis illaesas servare.'

[5] Hefele, p. 810.

[6] The interdict in England did not by any means fall 'powerless to the ground' (Huber, p. 16); Matthew Paris even does not say that: it was only London (sola civitas Londinensis) that despised the censures, whilst they were published per totam Angliam in brevi.

[7] What Matthew Paris says of John's inclination to accept his kingdom in fief from the sultan of Morocco, we consider—although he refers to Robert of London, a clerk of the royal chapel—to be a malicious invention; and also the answer of Miramolinus, so shocking to Christians, appears hardly credible. Lingard (ii. pp. 324, 325) endeavours to defend the account; Pauli (iii. p. 882) rightly condemns it.

[8] Honor. III. Ep. ap. Raynald. a. 1217, n. 79.

§ 4.

Innocent III. had protected the rights of John and his son, particularly as the former was his vassal, and had taken the cross. He could neither be expected to repel John in 1213 with severity after his submission and to refuse any reconciliation, nor to allow John in 1215 to be oppressed by rebels or turned out of his country by foreigners. The Papal condemnation of 1212 was intended to bring the misguided king back to his senses and to save his throne for him. The feudal superiority given over to the Pope was likewise intended to protect the king against the power and the revenge of the rebels, to free the kingdom from foreign invasion, and to maintain the lawful succession. If Innocent had repelled the king in 1213, would i'

have been said that he wished the destruction of a sinner, not that he should be converted and live?[1] Had he declared himself on the side of the barons against John in 1215, would he not have been accused of openly favouring rebellion, of siding with rebels, of violating duties newly undertaken? And would not these accusations be much better founded than those which now it is alone possible to raise?

[1] When Innocent III. (1199) absolved Markwald he declared: 'Ad reconciliationem et receptionem Marcowaldi *debitum officii pastoralis, quo tenemur omnes ad viam rectitudinis revocare ac redeuntes recipere*, nos induxit et optata regni tranquillitas invitavit, ut simul et humiliaremus hostem et humiliatum et poenitentem *ejus* reciperemus exemplo, qui non vult mortem peccatoris, *sed ut magis convertatur et vivat*, qui Chananaeam et publicanum non solum vocavit ad poenitentiam, sed et traxit' (l. ii. Ep. 167, p. 716, ed. Migne). In another place, he had accepted him 'ne se poenitentem, sicut videbatur .... recipere negaremus, non Christi vicarii videremur vel successores Apostolorum principis, sed inexorabiles potius nostrarum injuriarum ultores' (ib. Ep. 179, p. 729). In the same way at the absolution of the King of Leon (l. vii. Ep. 94, p. 376, ed. cit.). As early as in 1207, Innocent III. described the object of his measure against John: 'Ut *medicinali manu* sanatus in gratiarum nobis actiones assurgat.' Innocent III. (l. xvi. Ep. 80, p. 882; Ep. 81, p. 883) expressly mentions the words of Scripture (Ezech. xviii. 23; xxxiii. 11; 2 Peter iii. 9).

§ 5.

Let us hear an impartial historian concerning Magna Charta. L. Ranke says: 'By the Charta the barons usurped a power of compulsion over the king, which was set aside, with other weighty claims, in the reign of Henry III.[1] It is not the original Magna Charta of John which is the foundation of English liberties, but the one revised in the reign of Henry III.[2] Magna Charta was the project of an agreement, the execution of which was to be the subject of dispute for centuries.'[3] Pauli[4] and the 'decidedly Catholic' Lingard[5] will be cited against us, but they do not say anything essentially different. They mention the numerous alterations which the Charta has undergone.[6] Lingard only says it was considered as the basis of English freedom; and Pauli, that 'as the kings repeatedly perjured themselves, and vainly strove to demolish the principles of Magna Charta,

the whole fabric of English freedom was considered as linked with Magna Charta.'[7]

[1] Ranke, Engl. Gesch. i. p. 72.
[2] Ib. p. 75.
[3] Ib. p. 76.
[4] Pauli, Geschichte von England, iii. 424.
[5] Lingard, Hist. of Eng. ii. 349.
[6] Ib. p. 359.
[7] Pauli, l.c.

§ 6.

With regard to Scotland, Boniface VIII. is alleged to be the first who declared that it belonged to the Roman See.[1] This is certainly untrue. The Scotch Church was subject in early times to the metropolis of York, and this led to many disputes,[2] especially as the Kings of England made use of the ecclesiastical dependence of Scotland to bring about its political dependence.[3] Innocent II. had in 1131 confirmed its dependence upon the see of York;[4] but Celestine III. in 1192 cancelled this arrangement at the prayer of King William, and placed the Scotch Church directly under the Apostolic See,[5] to which also the country now sought to unite itself more closely. There were continual wars between the English and the Scotch. Henry II. tried to gain influence among the latter, and to overthrow the Scotch king. John Lackland accepted the feudal oath from King William and his son Alexander in 1209 and 1212; Henry III. also received it from the latter. The Scotch on their side were only willing to acknowledge the feudal supremacy of England for a few counties, and not for the crown of Scotland itself. King Alexander III., although married to an English princess (1251), avoided taking the oath at York; and in 1256 the English king expressly acknowledged the complete independence of the Scotch crown. When, in 1290, Alexander III. died, leaving no male heirs, and sanguinary disputes broke out in the country between the families of Bruce and Baliol,[6] England, under Edward I., sought to bring about the absolute feudal dependence of Scotland. Edward I. begged Nicholas IV. to confirm the claims of the crown of England; but the Pope declared that it was not in his power, as he could not deprive the Roman

See of an overlordship which belonged to it.[7] Most probably the Scotch, in order to avoid the English claims, had already many times declared that their kingdom should only be dependent on the Roman See. Boniface VIII. by no means refused the King of England every right, but he wished to have it proved by plenipotentiary in Rome. He demanded, above all, the liberty of the clergy and the rights of the Church,[8] and only repeated the statements of the Scotch agents, who in Rome had eagerly maintained that Scotland belonged to the Roman See. He did not decide about it in any definitive manner. The feudal union of Scotland and Rome was scarcely ever touched upon again; it never came into active existence.

[1] Huber, p. 37.

[2] Hefele, v. pp. 348, 616 seq.

[3] This is a difficulty which had already occurred to several countries. With reference to Moravia, cf. Dudik, Mähr. Gesch. i. p. 156 seq.

[4] Jaffé, Reg. n. 5357, 5387 seq. pp. 565, 567.

[5] Mansi, xxii. 618. Jaffé, n. 10,361, p. 891.

[6] Pauli, Gesch. Englands, iii. pp. 171 seq. 349 seq. 505 seq. 638, 665, 703; iv. 53 seq. Lingard, ii. 320 seq. 401 seq. 525 seq.

[7] Spondan. a. 1290, ex Reg. Vat. Ep. 102: 'Se non posse in regno Scotiae Sedi Apostolicae obnoxio Ecclesiae Romanae derogare ejusque fiduciarios regi Anglo submittere' (Lingard, ii. p. 560, n. 2).

[8] Rymer, ii. 844 seq. Lingard, ii. p. 559 seq. Pauli, iv. p. 248 seq.

§ 7.

Of other kingdoms we only know that they paid a yearly tax to the Roman See; for instance, Sweden, under Popes Anastasius IV.[1] and Innocent III.,[2] and under the latter Poland[3] also, whose Duke Boleslav drew down many rebukes upon himself on account of his tyranny (1206).[4] In 1295, Boniface VIII. made Duke Przemysl II. of Kalisch king of all Poland; and in 1319, John XXII. declared, after continued contests between that country and Bohemia, that Poland stood directly under the protection of the Roman Church.[5] Some towns also paid a similar tax for the special protection of the Roman Church; for example, Marseilles under Gregory IX.[6] Under Honorius III. the Isle of Man was made subject to the Church of Rome by King Reginald.[7] Under Gregory IX. the neophytes of Gothland were

pronounced independent of Sweden and Denmark, and only subject to their bishop.[8] Later, Lithuania was marked out as the property of the Roman See.[9] Vulcan, King of Dalmatia and Dioclea, took an oath of allegiance to Pope Innocent III., and submitted himself and his country.[10] Kalojohn, King of Bulgaria and Wallachia, in order to be independent of other princes, placed himself under the Roman See.[11] He begged from Rome a crown and imperial honours, such as (in the tenth century) his predecessors Peter and Samuel had received.[12] In 1204, Innocent sent Cardinal Leo of the Holy Cross to anoint and crown the king acknowledged by him, and to receive the acknowledgment of the Papal jurisdiction.[13] He determined the rights of the primate, and gave further instructions.[14] On the whole, this submission had only a transitory importance. The Popes were generally careful not to insist on feudal subjection where it had been quite voluntary, and especially when the princes of later times opposed it.[15]

[1] Jaffé, Reg. n. 6819, 6820, p. 658, d. 28 Nov. 1154.

[2] Innoc. III. Supplem. Ep. 230. Migne, ccxvii. p. 265.

[3] Innoc. III. l. ix. Ep. 219, p. 1063. Thomassin, P. iii. l. i. c. xxxii. n. 11.

[4] Ib. Ep. 217, p. 1060 seq.

[5] Thomas. l.c. Joh. XXII. ad Aep. Gnesn.: 'Tam vos per episcopum et literas quam idem episcopus per se ipsum cum multa nobis instantia supplicastis, ut cum regnum praedictum esset nobis et Ecclesiae Romanae nullo mediante subjectum, et in signum subjectionis ejusmodi census, qui denarius B. Petri vocatur, nobis et eidem Ecclesiae annis singulis deberetur,' &c.

[6] Raynald. a. 1230, n. 29.

[7] Raynald. a. 1219, n. 44.

[8] Thomassin, l.c. n. 11.

[9] Raynald. a. 1254, n. 27; a. 1255.

[10] Innoc. III. l. i. Ep. 176, 526, 527, pp. 725 seq. 481 seq.

[11] Gesta Innoc. n. 70, p. 126.

[12] Innoc. l. v. Ep. 115, p. 1112 seq. Cf. l. vi. Ep. 143, 144, pp. 156-158.

[13] L. vii. Ep. 1, p. 277 seq., where it says: 'Populos Bulgarorum et Blachorum, qui multo jam tempore ab uberibus matris suae alienati fuerunt, in spiritualibus et temporalibus providere volentes ejus auctoritate confisi, per quem Samuel David in regem innunxit, *regem te statuimus* super eos et per dil. fil. Leonem tit. S. Crucis presb. cardinalem Ap. Sed. legatum sceptrum regni ac regium tibi mittimus diadema ejus quasi nostris tibi manibus imponendem, recipiendo a te juratoriam cautionem, quod

nobis et successoribus nostris et Ecclesiae Rom. devotus et obediens permanebis et cunctas terras et gentes tuo subjectas imperio in obedientiae devotione Sedis Ap. conservabis.' Cf. Ep. 12, p. 295.

[14] Ib. et Ep. 2, 3, Aep. Trinovit. p. 280 seq.; Ep. 7-11, p. 292 seq.

[15] Thomassin, l.c. c. xxxii. n. 1.

§ 8.

To say that Innocent III. or his successors considered and treated *all princes* as his vassals[1] is one of those assertions which, often brought forward, are never proved, and which never can be proved in face of the Papal Briefs. Let any one look, for example, at the Papal Briefs addressed to John Lackland before taking the feudal oath,[2] to Philip Augustus of France,[3] to the Kings of Denmark,[4] Castile,[5] Hungary,[6] &c. The form 'to take under the protection of St. Peter,[7] that is continually recurring, does not refer to vassalage, which indeed is shown by its being applied to the princes who undertook a Crusade. The only effect of this protection was that injuries done to any one thus protected would be considered sacrilegious, and censured in the same way as if they had been done to the Church of Rome.[8]

[1] Huber, p. 18. Friedberg, p. 27 seq.

[2] Innoc. l. v. Ep. 160, pp. 1175-1177. Cf. l. vi. Ep. 63, a. 1203, MCCXV. p. 61; l. vii. Ep. 171, a. 1204; ib. t. 484, seq. n. 8, Ep. 166, p. 747.

[3] L. i. Ep. 171, 348, 355; l. ii. Ep. 24; l. vi. Ep. 150, 182.

[4] Cf. l. vi. Ep. 181, pp. 194-198; Ep. 198, p. 771; l. x. Ep. 41; l. xi. Ep. 10. The Archbishop of Lund was commissioned in 1204 to collect the census B. Petri in Denmark and Sweden (l. vii. Ep. 155, p. 461).

[5] L. vi. Ep. 80, 94, pp. 82, 99; l. viii. Ep. 50, 203, pp. 616, 617, 782 seq.; l. xiv. Ep. 4, p. 380; Ep. 154, 155, p. 513 seq.; l. xv. Ep. 183, p. 703.

[6] L. viii. Ep. 126-128, p. 410 seq.; l. viii. Ep. 36-42, p. 595 seq.; Ep. 88, 107, 127, pp. 668, 675, 702; l. ix. Ep. 74, p. 893; l. x. Ep. 39, p. 1132.

[7] The common form was: 'Tuis justis precibus grato concurrentes assensu personam tuam cum omnibus bonis, quae impraesentiarum rationabiliter possides, specialiter autem . . . . aut in futurum justis modis Deo propitio poteris adipisci, sub B. Petri et nostra protectione suscipimus et praesentis scripti pagina communimus.' Thus, for example, l. ii. Ep. 182. R. Comiti Licii, p. 733. It is declared (l. vii. Ep. 177, p. 489), that being taken under the protection of St. Peter does not withdraw the clergy and laity from the jurisdiction of their bishops.

[8] L. x. Ep. 149, Regi Francorum, p. 1247: 'Nos, ut securius his possis intendere, terram tuam et homines tuos ac eorum bona interim sub B.

Petri et nostra protectione suscipimus, et si quis (quod non credimus) te vel tuos nequiter molestare praesumpserit, tantam injuriam, quam reputaremus Sedi Apostolicae principaliter irrogatam, curaremus per censuram canonicam vindicare.'

§ 9.

Though several princes offered their countries to be held as fiefs from the Popes it was done voluntarily and without compulsion, and, as a rule, the Popes only accepted when they were convinced that the rights of no third party were injured by their so doing.[1] Accordingly Innocent IV. (1244-45) declined the offer made by Prince David of Wales to place himself under the feudal sovereignty of the Pope because he was a vassal of England;[2] and then again he accepted, in the interests of the propagation of Christianity, the subjection of his country to the chair of Peter, proposed by the Grand Duke of Lithuania, and he allowed him to be invested by the Bishop of Culm with the insignia of authority.[3]

Whoever carefully examines the actions of the Popes will find that their object was not to aggrandise their earthly possessions,[4] but conscientiously to preserve the rights that had been transmitted to them, and to increase their influence in the interests of the Church. Some may have gone too far in this, or their measures may have been too violent. Clement V., for whose mode of government we are not responsible, acted with great severity towards the Venetian Republic, which, however, was not disputing with him 'the possession of Ferrara,'[5] but had violently usurped the territory which Francesco, Duke of Reggio, held as lawful feudatory under Papal authority. The admonitions of Clement V. had no effect; his ambassadors in Venice were grossly insulted, and the right of the Church of Rome utterly disregarded. If the Pope took such measures against the obstinate islanders as before had only partially been taken,[6] it was but a severe carrying into effect of the public law of those days;[7] the object was to protect the international principles of the Middle Ages against insolent encroachments, and to brand the disturbers of such principles as common and public enemies. In the Middle Ages whoever was a declared obstinate enemy of

the Church was a public enemy as long as he was not prepared to make requisite satisfaction.[8]

[1] According to the old canonical rule, 'Ne laedatur jus tertii.'

[2] Rymer, i. 425. Lingard, ii. pp. 403, 404.

[3] Raynald. a. 1251, n. 45; 1254, n. 27. Thomassin, P. i. l. i. 59, n. 5.

[4] Not only De Maistre (Du Pape, l. ii. c. vi. pp. 241, 55) has shown this, but also Michaud (Hist. des Croisades, t. vi. p. 231).

[5] Huber, p. 39. Schulte, i. p. 37 seq.

[6] When the citizens of Piacenza had shamefully ill-treated their bishops and plundered the churches, Innocent III., 1204 (l. vii. Ep. 173, pp. 487, 488), ordered the Lombard bishops: 'Quatenus cives jam dictos, ad quemcumque locum provinciae Mediolanensis devenerint, in colloquiis, hospitiis atque contractibus tamquam excommunicatos faciatis arctius evitari et tenere etiam bona eorum, ubicunque illa contigerit inveniri, donec per satisfactionem condignam reconciliari Ecclesiae mereantur.' Cf. l. ix. Ep. 131, pp. 948, 949; Ep. 166, 167, p. 995 seq. And before that, when the citizens of Treviso murdered the Bishop of Belluno, burnt churches, practised many cruelties, and despised censures, Innocent threatened to remove the bishopric, to forbid trading and intercourse with them, to seize their merchants and confiscate their goods (l. ii. Ep. 27, pp. 355-358). After satisfaction was promised, then (1200) absolution was assured to them upon certain conditions (l. iii. Ep. 39, p. 922).

[7] Bishop Fessler (pp. 50, 51) justly considers it ridiculous to wish to make a dogmatic proposition out of an 'edictum judiciarium,' as does Schulte (i. p. 37, n. 5) when he says: 'The Pope can make *slaves* of Christian subjects and *dispose of them*, when their ruler or rulers have been excommunicated;' and as do the 'German theologians' in the Allgemeine Zeitung of June 19, 1870, A. B. n. 8: 'The Pope can, *according to divine right* [where is that to be found?], give up, without distinction, whole Christian nations to slavery because of some measure enacted by one of their princes.'

[8] Some jurists of that time carried the matter to its logical results and said: 'Ad servitutem *accidentalem* juste potest Papa rebelles damnare.' Thus Augustine Triumphus, Sum. de Potest. Papae, q. 22.

§ 10.

Few other rulers would have been contented to lose so many temporal possessions as easily as the Popes did in the course of centuries. Long after the foundation of the States of the Church Papal authority was ill-established, Papal possessions were often occupied by powerful noble families; in the twelfth century they were threatened by the efforts of the republicans, and later by the Ghibelline party. Innocent III. first brought

about a stronger and firmer government in the State, while recognising the ancient liberties of the towns.[1] When the consuls and the people of Montebello submitted to him as to their sovereign, they declared that[2] 'no one can deny that our town belonged to the dominion of the Duchess Matilda. But formerly the Church of God could not exercise its authority in this place, having been weighed down by the civil power. Now, however, in our time, as ordained by Almighty God, the prodigal sons return to the bosom of their mother, and desire in everything to maintain the authority of their father. We all unanimously beg and entreat for your government and desire to swear fidelity to your Holiness; and we do so the more faithfully, as we confidently believe that you have the Spirit of God, and through it receive the power to lead everything by your wisdom back to its right condition.' Then came the request that the ancient and modern rights of the township should still be granted, which was accorded. Individual municipalities retained their privileges, and were only laid under trifling obligations.[3] In the struggles with Frederick II. the greater part of the Papal States was lost again, and the French Popes at Avignon could not remedy these losses. Cardinal Ægidius Albornoz (1353-1368) alone stands out as a statesman and legislator of any importance.[4] The power of the Holy See in the Papal States, and especially in Rome, was not more firmly established until the fifteenth century, when it was restored by Julius II.[5] Parts of the States were frequently alienated to vassals, vicars, or relations. Gregory IX. had caused such alienations to be dependent on the consent of the cardinals,[6] and the Council of Constance renewed that condition.[7] Paul III. and Paul IV. still practised such alienations.[8] The Bull of March 29, 1567, issued by Pius V. put a bar to such proceedings for ever.[9] After the incorporation of Ferrara (1596) and Urbino (1631)[10] the States of the Church continued the same till the French Revolution; but then Venaissin, which had belonged to the Popes since 1274,[11] and Avignon, which they had bought in 1348, were incorporated with France, without the smallest indemnification, by a decree of September 14,

1791, both territories having been temporarily taken away, 1768-74. The forced peace of Tolentino (February 19, 1797) moreover took away the three legations, which were only restored in 1815, with certain diminutions. The revolution, after several short-lived triumphs, destroyed the States of the Church in three successive attacks in 1859, 1860, and 1870. The nineteenth century has swept away all old feudal relations, and has reduced the Popes to political impotence. The enemies of the Church rejoice at all feudal links being broken, and at the destruction of the States of the Church, and mock at the Papacy reduced to such temporal weakness; nevertheless they affect to show an unconquerable dread of the spiritual and moral power of this same Papacy, and to believe that with the dogmas which the world derides it will once more conquer the world and bring all kingdoms into subjection!

[1] Cf. Döllinger, The Church and the Churches, pp. 342-347, Eng. trans. 1862.

[2] Innoc. III. l. i. Ep. 47 (Migne, ccxiv. p. 44).

[3] Döllinger, l.c. p. 347.

[4] Döllinger, p. 353.

[5] Döllinger, p. 356. Ces. Cantù, Storia Univ. l. xv. P. i. c. iv. v.

[6] Greg. IX. Const. 6, Rex excelsus, Bull. i. 76.

[7] Conc. Const. Mansi, xxviii. 270, 368. Hausmann, Gesch. der Päpstl. Reservatfälle, p. 219 seq. A remedy was sought in capitulations of the German emperor (Döllinger, Lehrbuch, d. K. Gesch. ii. n. 349, 353, 357 seq.).

[8] Döllinger, The Church and the Churches, p. 361 seq.

[9] Pius V. Const. 35, Admonet nos, Bull. ii. 236.

[10] Döllinger, l.c. p. 358.

[11] Hefele, Conc. vi. p. 118.

ESSAY XI.

BONIFACE VIII. AND PHILIP THE FAIR.

SELDOM has a Pope been so much calumniated, both during his life and after his death, as Boniface VIII., who before his pontificate had distinguished himself as a jurist. The Colonnas, the Italian Ghibellines, Nogaret and Peter Flotte, the French jurists, the fanatic monks, all used every effort to dishonour his memory,[1] and heavily did the Pope pay for his delusive hope of finding a Catholic king of the old sort, and a worthy successor of St. Louis, in Philip the Fair of France. His principal object was to restore peace throughout Europe, and to lead the allied strength of the Christian princes against the infidel;[2] but the mutual hatred of these princes was too great and too selfish for them to give ear to his peaceful admonitions, and in the States of the Church the powerful Colonnas were preparing the most serious difficulties for the Pope.[3]

Pope Boniface VIII. had specially to defend the rights and liberties of the Church against Philip IV. the Fair of France.

[1] Spondan. Ann. a. 1301, n. 2; 1303, n. 8, 14. Bianchi, t. i. l. i. § 10, p. 91 seq.

[2] Raynald. a. 1295, n. 43. Hefele, Conc. vi. p. 254.

[3] Christophe, Hist. du Papauté au 14me siècle, Germ. transl. i. p. 65 seq.

PART I. BONIFACE VIII. AND PHILIP THE FAIR UNTIL THE PUBLICATION OF THE BULL 'UNAM SANCTAM.'

§ 1. Attempt of the Pope to mediate between the Kings of England and France. § 2. Bull 'Clericis laicos.' § 3. Measures of the king against it. § 4. Bull 'Ineffabilis.' § 5. Apparent adjustment of the quarrel. § 6. Principles of the two parties. Judgment of the Pope as arbitrator. § 7. Further violent acts of Philip. § 8. Mission of the Bishop of Pamiers. § 9. Papal decrees of 1301. Difficulties of the Pope. § 10. Bull 'Ausculta fili.' § 11. Forging a false Bull. § 12. Convention of

the States-General. § 13. Letters of the clergy and nobility. § 14. Answers from Rome. § 15. Justification of the Pope. § 16, 17. His speech. § 18. Synod at Rome, and its results.

§ 1.

If Boniface wished Philip the Fair and the King of England to allow their differences to be adjusted by him,[1] surely that was by no means unjust—it was far better than quietly to sit by and watch the war of the two princes; and for many centuries the Pope had been acknowledged as umpire between the different countries.[2] In numberless letters (1295) he admonished both the kings, particularly Edward I. of England, whom he reminded of his youthful ardour for the Holy Land.[3] Edward explained to the legate that he could not conclude a peace himself without the consent of his ally, the German King Adolphus. The Kings of England and Germany seemed inclined to accept mediation,[4] but the French king raised difficulties and frustrated the whole. At that time Philip most faithlessly took prisoner the Count of Flanders and his wife; and only set them free on their consenting to leave behind their daughter, who was betrothed to the son of Edward of England. He allied himself to the Scotch king against England, and once more a violent war broke out.[5] Boniface, who considered it a sacred duty to prevent the shedding of blood amongst Christians, again, in 1296, exhorted them to make peace, and obliged the princes to sign a truce, and obtained from Edward and Philip a declaration that they were ready to allow him to mediate between them.[6]

[1] Huber, p. 37.

[2] Alex. III. (Baron. a. 1167, 1168; Petra, Comment. t. ii. p. 43). Innoc. III. l. vi. Ep. 68, 163, 166. Coelest. V. Rymer, Foed. i. ii. p. 811.

[3] Raynald. l.c. Rymer, l.c. p. 817.

[4] Later the Popes often undertook such an office, as for instance John XXII. 1317, 1320, 1324 (Rymer, ii. i. pp. 317, 431, 558).

[5] Hefele, Conc. vi. p. 258 seq.

[6] Raynald. a. 1296, n. 18-21. Bianchi, t. ii. l. vi. § 5, n. 1-3, pp. 449-454.

§ 2.

Both kings carried on their wars principally by money obtained from the arbitrary taxation of the Church. Many French

prelates sent a petition to Rome for protection against the numerous extortions practised by the royal officers,[1] and at the same time the Count of Flanders complained to the See of Rome of the forcible retention of his daughter. With regard to the latter complaint Boniface commissioned the Bishop of Meaux to remonstrate with Philip, and in case of a refusal to summon him to justify himself;[2] with regard to the former he published, with the consent of the College of Cardinals, the Bull 'Clericis laicos' of February 25, 1296,[3] which forbade under pain of excommunication that any tax should be levied or demanded on the income and goods of ecclesiastics and their churches without the consent of the Apostolic See. The clergy were forbidden under pain of deposition to submit to such impositions, and to pay anything without the express permission of the Holy See.

[1] To be found in Christophe, vol. i. doc. 3, pp. 324-326.

[2] Simon Vigior, Hist. du Différend, p. 3. Baillet, Hist. du Démêlé, p. 21. Christophe, l.c. p. 76 seq.

[3] C. 3, de Immunit. iii. 23, in 6. Cf. Bianchi, l.c. n. 4 seq. p. 454 seq.; Phillips, K.R. iii. § 130, p. 243 seq. The introduction on the enmity of the laity towards the clergy recalls can. 9 of the Synod held at Nantes in 1264 (Hefele, vi. p. 74), and the introductory words of the Synod of Château-Gontier, 1268 (ib. p. 100). According to the Synod of Tours, 1282, c. 11, there were lords who even forbade their dependents to hold intercourse with priests (ib. p. 202).

§ 3.

The Bull was based both on the aforesaid petition of the prelates referring to heavy oppression,[1] and also on the ancient ecclesiastical laws, which were recognised even in France. The third Lateran Council, 1179, had already, in canon 19, decreed that Church property should be burdened with extra taxes only when the bishops and clergy recognised their necessity or advantage;[2] the fourth Lateran Council, 1215,[3] required that the Pope should be consulted even as to voluntary contributions of the bishops and clergy.[4] Moreover the second Council of Lyons, 1274, directed that whoever, through being the founder or through custom, had any right of advocacy or any similar rights over churches, monasteries, and charitable foundations,

was not permitted to abuse them or to claim any of the revenues, except during the time of vacancy.[5] Philip the Fair, suspicious and irritable, imagined a special attack on his crown in the Bull of Boniface, which was really published in general for the whole Church; he ordered that no foreigners should be allowed to engage in trade in France, that gold, precious stones, arms, and provisions should not be exported without the written permission of the king.[6] This measure was directed against the sums of money despatched to Rome, also against donations for the Holy Land, legacies to the Holy See, &c., and was meant to loosen the ties which united French ecclesiastics to the Head of the Church.

[1] As in the Bull the 'trepidantes ubi trepidandum non est, transitoriam pacem quaerentes, plus timentes majestatem temporalem offendere quam aeternam' were mentioned, so were also in the petition the 'propriae prudentiae innitentes et humanam amittere gratiam formidantes;' the Bull forbade taxes to be imposed 'absque auctoritate Sedis Apostolicae,' and in the petition it was asked that they should only be demanded 'prius interveniente Romani Pontificis consilio, cujus interest communibus utilitatibus providere;' as in the Bull it is brought forward that the laity 'in clericos ecclesiasticasve personas vel bona sit interdicta potestas,' in the petition it was 'cum eis (laicis) super his nulla sit attributa facultas nec auctoritas imperandi.' These words of the petition, that the clergy were worse off than the Egyptian priests under Pharaoh, are taken from the third Lateran Council (vide the following note), to which Boniface VIII. plainly refers.

[2] C. Non minus, 4, de Immunit. Eccl. iii. 49.

[3] C. Adversus, 7, h.t. (Mansi, xxii. p. 1030).

[4] The words 'cujus interest communibus utilitatibus providere,' just quoted from the petition to Boniface VIII., are taken from this Council. If the Pope was once asked, his answer was decisive. Innocent also declared constitutions contrary to this to be void. Cf. Hausmann, Gesch. der Päpstlichen Reservatfälle, p. 194 seq. The Council of Constance afterwards repeated the same provision.

[5] C. Generali, 13, de elect. i. 6, in 6.

[6] Dupuy, Hist. du Diff. Actes et Preuves, p. 43. Baillet, l.c. p. 26.

§ 4.

Boniface VIII. remonstrated with the king, especially in the Bull 'Ineffabilis' of September 25, 1296,[1] over this encroachment on the rights of the Church. He conjured him to respect them.[2] Philip, he said, could find no excuse for his decree in the Bull

of February 25, because for the most part it only contained what had been long since established by other canonical sanctions.[1] It did not forbid the payment of contributions in money for the defence of the king and the country on the part of the clergy, but only required the Papal authorisation for such payment, in order to abolish the abuses practised by the royal officers, against which many complaints had already been raised. When it was really necessary for the country, the Apostolic See would not only approve of such contributions by the prelates and other ecclesiastics, but even order them; and in case of urgent necessity would rather allow the sacred vessels and the crosses of the churches to be sold, than expose to danger a kingdom so glorious and so much beloved by the See of Peter. Further on Philip was reminded how dangerous it would be for him if Rome were to side with his two enemies,[3] the King of the Romans and the King of England, who were both disposed against him—the former on account of his having retained some territories belonging to the empire, the latter on account of some contested provinces—both ready to accept the judgment of the Holy See,[4] and both asserting that Philip was in fault. Moreover, the Pope expressly declared that his Bull in no way concerned the service and tribute which proceeded from the feudal relation, and that he had already explained this by word of mouth to the king's ambassadors and confidants; but he also protested that he and his brethren were ready to suffer persecution, exile, and even death itself, for the liberty of the Church.[5]

[1] Raynald. a. 1296, n. 25 seq. Dupuy, l.c. p. 15.

[2] 'Et si (quod absit) fuerit condentis (legem) intentio, ut ad nos et fratres nostros Ecclesiarum praelatos ecclesiasticasve personas et ipsas Ecclesias ac nostra et ipsorum bona non solum in regno tuo, sed constitutorum ubilibet extendatur, hoc non solum fuisset improvidum, sed insanum, velle ad illa temerarias manus extendere, in quibus tibi saecularibusque principibus nulla est attributa potestas' (Words of Innocent III. c. x. de Const. i. 2); 'quin potius ex hoc contra libertatem eamdem temere veniendo in excommunicationis sententiam promulgati canonis incidisses.' Bossuet, P. i. l. iii. c. xxiii. p. 322, considers these words are exaggerated. But as far as Church property is concerned the Church alone has the right to dispose of it, as she has oftentimes declared. Honorius III. excommunicated those laymen who published statutes against ecclesiastical liberty, c. xlix. Novit. v. 39, de Sent. Excom.

[3] Bossuet, l.c. p. 323, does not consider these intimations as either Papal or fatherly, though really they are perfectly intelligible when made to such a prince as Philip the Fair: for on the one hand, Philip treated his subjects neither in a fatherly nor royal manner, and did not behave to the Pope as a son of the Church; and on the other hand, it might well be possible, even necessary, on just grounds for the Pope to declare in favour of Philip's adversaries, which would give them an increased moral weight. It is not a question of assistance rendered by material weapons.

[4] Raynald. l.c. n. 9: 'Numquid super iis dicti reges denegant stare juri? Numquid Apostolicae Sedis, quae Christicolis omnibus praeeminet, judicium vel ordinationem recusant?'

[5] Cf. the analysis of the Bull, apud Hefele, vi. pp. 267-269.

§ 5.

But King Philip was able to insure the execution of his orders, for he had just gained a victory over the English, and by oppression and craft had learnt to keep his subjects in hand. A deputation also which was sent to Rome was successful. In 1297 the king and the French clergy received from the Pope new explanations modifying his Bull, which was not to forbid the levying of subsidies in cases of necessity. The Kings of France—or during a minority the States-General—were to determine the existence of a case of necessity.[1] Boniface did all he could to appease the king;[2] he approved the ready support given to the king by the prelates, shown in their agreement to pay him the tithes for two years. He granted him further privileges, and on August 11 completed the canonisation of his grandfather, Louis IX.[3] This gave general satisfaction in France, and Philip then stayed the execution of his orders, and allowed the Papal agents to send the revenues of the Apostolic Chamber to Rome. Towards the beginning and during the course of the year 1298, harmony between Rome and France seemed once more restored.[4]

[1] Dupuy, p. 39. Thomassin, l.c. n. 9, remarks: 'Huic Bonifacii constitutioni Joannes Ferrant in tract. de juribus et privilegiis regni Francorum, Privil. iv., superstruxit illud regum privilegium, ut a clero exigant nomine mutui, doni, subsidii charitativi ad defensionem regni sine nova permissione Papae.'

[2] Rayn. a. 1297, n. 45 fin. 46 init. n. 50 fin.

[3] Rayn. l.c. n. 46, 58.

[4] Baillet, l.c. p. 56. Daniel, Hist. de France, t. v. p. 56.

§ 6.

But though to all appearance the Pope and the king were nearly reconciled, they were in reality farther apart than they themselves knew: a fundamental principle separated them. The former desired to maintain the rights which, as Head of the Church militant, he had received from his predecessors; the latter, on the contrary, desired to be free from all ecclesiastical control, and to exercise his civil power quite independently of all spiritual power. The differences of principle were not removed by the peace in such a way as to prevent their revival when an opportunity should present itself.[1]

A truce was concluded, January 6, 1298, between France and England, and both kings chose the Pope as arbitrator between them; not, however, as Pope, but only as a private individual. He gave his judgment as Benedict Gaetani, and published it in open consistory, June 27, as Boniface VIII.[2] The Pope's judgment was carried out, though not at once, in all its parts;[3] and though it was perfectly just, Philip was dissatisfied. He unjustly[4] accused the Pope of partiality towards the King of England. However, when the Pope added his Papal sanction to the judgment he had given as private arbitrator, Philip did not complain.[5]

[1] Christophe, l.c. p. 81.

[2] Raynald. a. 1297, n. 42; a. 1298, n. 1 seq. Dupuy, p. 41. Rymer, Foed. pp. 893, 894. Cf. Spondan. a. 1298, n. 1; Bianchi, l.c. § 5, pp. 471, 472; Leibnitz, Cod. Jur. Gent. Prodr. n. 16.

[3] Rymer, pp. 899 seq. 904 seq.

[4] Boutaric, l.c. p. 99 seq.

[5] Hefele, vi. p. 280.

§ 7.

Complaints of the oppression practised on the Church were continually on the increase in France. The Vicomte Amaury of Narbonne, refusing to take the oath of allegiance to his lord superior, the archbishop of that place, received from Philip a rescript in his favour. Philip seized the county of Melgeuil, which belonged to the Bishop of Maguelone, without any right or reason, and many of his vassals followed his example.[1] Philip

not only took for himself the revenues of vacated sees and of the so-called royal abbeys, but he also laid hands on their landed property, ordered forests to be cut down, &c. To this prerogative he superadded the 'sauvegarde royale' over all remaining vacated bishoprics and abbeys. Thus he, in fact, received the revenues of all vacated benefices;[2] but he also did the same by benefices that were not vacant. When, in 1298, Boniface VIII. suspended the Bishop of Laon, the king took possession of the property of that see, as though it were vacated. Some property, left by Cardinal John of St. Cecilia in his will for charitable purposes, was seized by Philip's order for the exchequer.[3] Count Robert, Philip's special favourite, occupied the town which belonged to the Bishop of Cambray. For a long time, and in spite of the Pope's remonstrances, Philip would not deliver up the sequestrated lands to the newly-elected Archbishop of Rheims. The Indult granted to him by Boniface, by which, in order to enable him to meet the expenses of the war, the firstfruits of the year of all provostships, archdeaconries, and other benefices, were adjudged to him for as long as the war should last, was enormously abused by the royal officers: the bitterest complaints ensued,[4] which obliged the Pope to remonstrate, January 1299.[5] Added to this, the war with Flanders was renewed, Count Guido deceived, and his country governed by French officials. Guido appealed to the Pope for assistance in 1300, but he died in captivity; even a victory gained by the Flemish over the French in July 1302 did not procure them their freedom.[6]

Whilst the Pope was using every effort to forward the interests of Philip's brother, Prince Charles of Valois, designating him to be emperor at least of the Greek Empire,[7] Philip himself was entering into a close compact (December 8, 1299) with the German King Albert, who, on account of the violation of an oath to Adolphus of Nassau, was not yet acknowledged by the Pope.[8] He was also receiving into France several rebellious members of the Colonna family, who spread the most injurious reports about Boniface.[9] Whilst in Rome Boniface was solemnly celebrating the great jubilee, and, as the result of many favourable circumstances, cherishing in his mind new hopes for the

deliverance of Palestine,[10] at the French court the one idea was to gain increase of power, and plans were formed which had the complete subjugation of the Papacy for their object.[11]

[1] Raynald. a. 1300, n. 30. Bianchi, l.c. n. 11, p. 475.

[2] Hefele, l.c.

[3] Rayn. a. 1299, n. 22, 23. Bianchi, n. 11, p. 474.

[4] Rayn. l.c. n. 25. Cf. the complaint of Bishop William of Anjou to the king, D'Archery, Spicil. nov. ii. p. 190 seq.; Bianchi, l.c.; Hefele, l.c.

[5] Const. Dudum celsitudini. Rayn. a. 1299.

[6] Christophe, l.c. p. 83.

[7] After the earlier negotiations of 1298 he summoned Prince Charles at the end of 1300 to Italy, in order to win back Sicily and settle all the disturbances. After the death of his wife, Margaretha of Naples, he effected his marriage with Katharina, only daughter of the titular Emperor Philip of Constantinople, who possessed some Greek territory (Raynald. a. 1300, n. 20, 21; Spondan. 1301, n. 2). In July 1300, Charles of Valois was in Milan (Coirus, Hist. Mediol. P. ii.), and in September in Anagni, where the Pope received him with honour, appointed him prefect and captain-general of the States of the Church, and afterwards imperial vicar in Tuscany. According to Villani, l. viii. c. xlii., he is said to have thought of giving him the crown of the Holy Roman Empire, as he had refused it to the German King Albert. But this must not be considered to be proved. Cf. Raynald. a. 1301, n. 3, 11, 13; Hefele, pp. 256, 281, 288; Bianchi, l.c. § 5, n. 12, pp. 476, 477.

[8] Hefele, p. 283 seq. Christophe, p. 84 seq.

[9] Hefele, pp. 327, 404, 406. Cf. also Hist. du Différ. p. 34; Bianchi, § 5, p. 470 seq.

[10] Hefele, pp. 284-287. Bianchi, l.c. § 6, n. 1, p. 479.

[11] Cf. also the record of the year 1300 discussed by Schwab (Tüb. Quartalschr. 1866, H. 1), which was probably drawn up by Peter Dubois of Coutances. Hefele, p. 285 seq.

§ 8.

It was impossible that the Pope, who was both bound and resolved to maintain his dignity, could remain indifferent to all this. The *ecclesiastical*, and not the *political*, grievances principally occupied his mind. In 1301 he sent the Bishop of Pamiers, Bernhard de Saisset, to France as his nuncio, in order to promote the projected Crusade, and to exhort the king to apply the Church tithes thereto, as he was bound, and also to remonstrate against the many violations of ecclesiastical privileges.[1] This prelate, when he was Abbot of Pamiers, had previously, in 1294, had a dispute with the king, and as Bishop

of Pamiers he was also unpopular at the court. In the mean time he had proved himself full of zeal for the Church. There is no proof that he behaved with arrogance. Philip wanted some scandal in order to throw the odium on the Pope, and he looked out for a favourable opportunity.[2]

Whilst the bishop was finishing his mission the king had him rigorously watched and twenty-four witnesses examined, of whom the most important was his personal enemy, the Comte de Foix. In the middle of the night (12th July 1301) he was summoned to Paris, robbed of his papers and possessions, separated from his chaplains and servants. The latter were put to the torture, to extort from them confessions which would tell against him. At the end of two months he was conducted to the court, and brought before the Council of State at Senlis on October 24th. Peter Flotte, Philip's confidential adviser, appeared as the public complainant. The defendant was found guilty of high treason, and delivered over to the Archbishop of Narbonne, who was desirous to keep him till the Papal decision should arrive. The bishop had protested against the competency of the assembly, and also against the assertions which he had been accused of making.[3]

[1] Spondan. a. 1301, n. 5. Bianchi, l.c. Boutaric, p. 103.
[2] Christophe, p. 86. Hefele, p. 290 seq.
[3] Preuves du Différend, pp. 628, 631. Martene, Thesaur. Anecdot. t. i. p. 1320, s. 1320. Christophe, pp. 87, 88. Hefele, pp. 291, 292.

§ 9.

On December 5, 1301, Boniface VIII. demanded from the king the freedom and the possessions of his nuncio, who was to be judged by the Church. He charged the Archbishop of Narbonne to release the bishop, and to allow him to travel to Rome with the legal documents of the trial.[1] He then convoked the bishops, doctors, and magistrates of France, as well as the chapter, which was to be represented by procurators, to attend a Council at Rome, and he invited the king to appear, either in person or by proxy, also the superiors of orders.[2] In the Bull 'Salvator' of December 4,[3] the Pope recalled all privileges with regard

to tithes[4] and Church properties, which had been specially granted to the king in times of war, now that such wars had ceased, and so many abuses were practised. The Bull 'Ausculta fili carissime' is dated December 5.[5] In it the Pope exhorts the king to listen as a son to his precepts, tells him of his paternal love, and reminds him of his duties as a Christian.[6] Among other things the Pope said: 'God has placed us, although unworthy, over kings and kingdoms.'[7] He specially called attention to the fact that the king did not allow canonical appointments to ecclesiastical offices to take effect, and set up his own nominees instead;[8] that, acting as judge in his own cause, he was both plaintiff and judge at the same time, and laid hands on the property and rights of the Church at pleasure; that he summoned prelates and other ecclesiastics to appear before his courts, taxed them, hindered spiritual jurisdiction over convents and other religious places, oppressed the Church of Lyons, which did not belong to his kingdom, took the revenues of vacated cathedral churches without moderation, and even exhausted them.[9] There was only too much reason for these complaints. The French kings of former times never thought of such an extensive royal prerogative, and only had the patronage of a few benefices.[10] Also, it was not customary in all the French sees for the royal officers to take charge of the Church property after the death of a bishop;[11] the further extension of such a custom was forbidden by the second Council of Lyons, 1274: it had originated in the fiefs held by the Church; even after Philip the Fair many of the sees, and indeed entire provinces, were exempt from it.[12] Louis IX. had many rights of patronage, which when he went to Egypt he gave over to the Bishop of Paris;[13] but Philip, by virtue of 'royal right and custom,' desired to have not only the presentation, but also the collation of all benefices belonging to the bishops when a see should become vacant, even where he had no patronage and no privilege.[14] It was an ecclesiastical principle of the old canons that the revenues of vacant sees belonged to the Church, and not to temporal princes,[15] and also that the laity could not of themselves bestow offices of the Church without a special con-

cession by the Church.[16] The Popes had to keep a firm hold on existing rights, and Boniface now acted as a guardian of the laws of the Church, and with full knowledge of the condition of things and the state of the law in France; he was ready to make many concessions, only as a matter of principle he desired and was bound to preserve the rights of the Church.[17]

The Pope further complained that a prohibition had been laid not only on the resident prelates and ecclesiastics, but also on those who were merely travelling through France, by which they were forbidden to export their movable possessions out of France, thereby experiencing much loss and an oppressive bondage; he also complained of the debasement of the coinage,[18] and other injuries and oppressions put upon the king's subjects; also of infraction of the liberty and immunity of the Church, against which many complaints had been brought to the Apostolic See, and general disapprobation evinced.

[1] Raynald. h.a. n. 27, 28. Hist. du Différend, pp. 637, 661. Tosti, Storia di Bonifacio VIII. 1846, ii. p. 128. Bulaeus, Hist. Univ. Paris, t. iv. p. 18.

[2] Rayn. h.a. n. 29. Dupuy, Actes et Preuves, pp. 53, 54.

[3] Rayn. l.c. n. 30. Dupuy, p. 42. Cf. Hefele, p. 293.

[4] These abuses often happened in France, especially under Philip Augustus. Peter de Blois wrote in 1188 (Ep. 20, Migne, ccvii. 74): 'Sane sicut audivimus, exiit edictum a Philippo rege, ut describeretur Gallicus orbis,et onerarentur Ecclesia decimationibus recidivis. Sic paulatim transibit decimatio in consuetudinem et praesumpta semel abusio ignominiosam Ecclesiae servitutem infliget.' He wished Bishop Rainald of Chartres, who was related to the king, to be stirred up to an energetic resistance. As Peter foresaw, decimation became a general practice. Choppin de Doman. l. iii. tit. 23: 'Neglecto sacrarum expeditionum consilio nihilo secius decimantur sacerdotiorum reditus et decimae in annuas fisci rationes patrimonii instaf reservantur.' Peter expresses himself very strongly in a letter to the Bishop of Orleans, Ep. 112, p. 335 seq., whom he calls upon to make a stand against the plundering of the Church practised on the pretext of the Crusade.

[5] Raynald. l.c. n. 31-34. Bull. M. ed. Lux. ix. 121. Dupuy, l.c. p. 48. Bulaeus, l.c. p. 7. Ap. Christophe, i. pp. 327-332, doc. 4. For this and other documents, vide Bianchi, t. ii. l. vi. § 6, n. 3, pp. 483-485. Phillips, K. R. iii. p. 252 seq.

[6] The whole passage, 'Campum siquidem militiae humanae mortalitatis ingressus, renatus sacri fonte baptismatis, renuncians diabolo et pompis ejus, non quasi hospes et advena, sed jam domesticus fidei et civis sanctorum (Eph. ii 19) effectus, ovile dominicum intrasti, colluctaturus

non solum contra carnem et sanguinem, sed etiam contra aëreas potestates .... (Eph. vi. 12) sic veri Noe es arcam ingressus, extra quam nemo salvatur,' &c., shows how the Pope wished to assert his *spiritual* power.

[7] The early Popes used the passage, Jer. i. 1, almost as a regular formula, as did also Innoc. III. c. Solitae, 6, de M. et O. i. 33; l. vi. Ep. 143, p. 156; l. vii. Ep. 1, p. 277; Ep. 14, p. 297 (cf. Vulcan. Dalm. Ep. ad Innoc. 1199, l. ii. Ep. 176, p. 725); previously Alex. III. Ep. 1356, ad Aep. Pisan. (Migne, cc. p. 1184); even John VIII. Ep. ad Basil. (Baron. a. 878, n. 111; a. 879, n. 26), and most of the writers of the Middle Ages, S. Bern. Ep. 238, ad Eug. III., and others. How Huber, p. 37, can bring this up as anything peculiar to Boniface VIII., is incomprehensible. According to the context there is no reason for assuming that the Pope as 'actual superior' was also to provide for the good government of the French kingdom in *temporal matters*.

[8] Vecerius, in Vita Henr. VII. Imp.: 'Ad hoc Philippus, ne quid impotentiae praetermitteret, sacerdotales Galliarum titulos a Pontificibus antea pro decretis proque more S. Matris Ecclesiae componi solitos ipse ordinare citra consensum praesidis Romani statuit, quae ubi summus antistes intellexit, gravissime tulit injuriam, pessimi exempli id quod erat existimans, si vel antecessorum recte instituta rescinderentur vel auctoritatem pontificiam laicus princeps profanasset.' Mutius, in Chron. Germ. l. xxii.: 'Rex ubi intellexit, Pontificis animum a se alienatum .... jus ecclesiasticum, quod Papae erat, sibi vindicabat, sacerdotia et episcopatus conferebat quibus placuit, quos praelatos cognoverat Pontifici patrocinari, deposuit, eorum praelaturas aliis conferens; diripuit etiam opulentiores episcopatus.'

[9] Innocent III., 1207, had already denounced such abuses of the royal prerogative in the Church of Auxerre to Philip II. l. x. Ep. 71, p. 1169 seq.: 'Idem rex audito quod b. m. Hugo Aep. naturae debitum exsolvisset, statim fecit per servientes suos episcopales res, quas vocat *regalia*, occupari, qui more praedonum debachantes in eis crudeliter Ecclesiae nemora passim fecere succidi, eadem venalia omnibus exponentes; stagna quoque fecerunt dirui et penitus expiscari,' &c. See also Innocent III. l. x. Ep. 195, p. 1300; l. xiii. Ep. 190, 191, p. 357 seq.; l. xiv. Ep. 52; l. xv. Ep. 39, 40.

[10] Bianchi, l.c. n. 5, p. 490 seq.

[11] Register of the royal chamber, ap. Pasquier, lib. iii. Disquisit. Francic. c. iii. De Marca, de Conc. viii. 4, 4.

[12] Bianchi, l.c. p. 494.

[13] Duchesne, t. v. p. 423.

[14] Hist. du Différend, pp. 90, 93.

[15] Photii Nomocan. tit. x. c. iii. De Marca, l.c. c. xviii. n. 11. Thomassin, P. iii. l. ii. c. liv. lv. Hincmar, Ep. 9, ad Episc. Prov. Rhem. c. xli. Baluz. cap. ii. 1286: 'Sicut episcopus et suas et Ecclesiae facultates in vita sua dispensandi habet potestatem, ita facultates Ecclesiae viduatae post mortem episcopi penes oeconomum integrae conservari jubentur futuro successori ejus episcopo, quoniam res et facultates Ecclesiae non in imperatorum atque regum potestate sunt ad dispensandum vel invadendum vel diripiendum, sed ad defensandum atque tuendum. Sunt enim sanctuaria et haereditas Domini.'

[16] Conc. Oecum. viii. c. 22. Greg. VII. l. iv. Ep. 22. Hugo Flavin. (Migne, PP. Lat. cxviii. 786). Thomassin, P. ii. l. i. c. lv. Ruxaeus, Praef. Tract. de Jure Regal. p. 5, n. 4. Joh. Ferraldus, de Privileg. Reg. Franc. c. viii. Others, ap. Thomassin, l.c. n. 7. The 'deliberatio magistri Petri de Blois contra assertas literas Bonif.' (Hist. du Différend, p. 45) appeals to the apocryphal Canon Hadrianus, d. 63, Sigel. Gembl. Chron. a. 773 (cf. Baron. a. 774, n. 13 seq.; Petrus de Marca, de Conc. viii. 12, n. 8, 9; Natal. Alex. saec. 8, c. i. a. 9; Pag. Crit. a. 774, n. 13; Bianchi, t. ii. l. v. § 10, n. 1, p. 288), which was never in force in France. Bianchi, l.c. l. vi. § 6, n. 9, pp. 498, 499.

[17] Boniface himself declared to the French delegates in consistory (Hist. du Diff. p. 77): 'Volumus rex faciat licite, quod facit illicite. Volumus super hoc sibi facere omnem gratiam, quam poterimus, quia certum est et omnia jura clamant, quod *collatio* beneficiorum non potest cadere in laicum, ita quod habeat jus seu potestatem conferendi.' Cf. Alex. III. Ep. 28, ad Episc. Angl. Conc. Later. iii. 1179, can. 9, 14; Innoc. III. l. xv. Ep. 192.

[18] Daniel, Hist. de France, t. v. p. 124, ed. 1755. Drumann, ii. p. 165. Hefele, p. 295, n. 1. The coin possessed accordingly in reality only one-third of its nominal value. The first Lateran Council, 1123, protested, c. 15, against this, as did also many local Synods, such as those held at Salzburg, 1281, and at Würzburg, 1287. On the great evils which at that time arose through debasing the currency, vide Hüllmann, Städtewesen. ii. p. 19.

§ 10.

The whole rage of Gallicanism was unloosed[1] against this Constitution, which abounds in biblical quotations and allusions. It has been alleged against it that it is injurious to the majesty of kings and offensive to Philip the Fair, and that it contains the maxim, unheard of before the time of Boniface VIII., that the Pope, as vicar of God on earth, is the lord of all the kingdoms of the world.[2] We have read and reread this Bull, but could find in it neither presumption nor insults nor menaces. It is true that its tone is forcible, but moderate,[5] even when reproaching. Boniface does not say that the Pope is the lord of the world, but that he is raised over those who govern the world, in order to oblige them to walk in the way of justice. And, indeed, how could the doctrine of the Bull 'Ausculta fili' astonish Philip the Fair, when modern historians, enemies to the Catholic Church, have not hesitated to declare openly, 'that it would be much better for the people if sovereigns would recognise over them a power descended from heaven, which would hold them

back from crime,[4] and that it were to be wished that the Church should recover her authority, and kings and kingdoms be made to tremble by interdict and excommunication, as in the days of Gregory VII.'[5] But this monarch was surrounded by corrupt men, who strove to disfigure the truth, in order to make it hateful; and the worst of these was Peter Flotte. He triumphed on this occasion. The Pope did not overstep his lawful powers in what he *commanded*. He spoke only as Head of the Church, and desired only to exercise a spiritual power; his grievances referred *altogether* to the rights of the *Church*, which had hitherto been acknowledged by the whole of Europe. Even when any matter had both an ecclesiastical and civil character, the Pope could consult and negotiate about it from an ecclesiastical point of view. For that purpose Boniface did not wish only to publish decrees, but also to advise with the French bishops as well as with the procurators of the king.[6]

[1] Christophe, l.c. p. 91 seq.
[2] Hist. du Différend, p. 10. Baillet, l.c. p. 96 seq.
[3] Tosti, Storia di Bonif. VIII. vol. ii. p. 131.
[4] Sismondi, Hist. des Républiques Ital. t. iv. p. 139.
[5] Leibnitz, Lettre ii. à M. Grimaret.
[6] Bianchi, l.c. n. 4, pp. 487-490.

§ 11.

Although the document 'Ausculta fili carissime' was dated the 5th December 1301, it was nevertheless discussed once more in consistory, and delivered over in the beginning of the following year by the Archdeacon of Narbonne, Jacques de Norman. But at the audience on the 10th February 1302 the Comte d'Artois, Philip's cousin, snatched the Bull away from him and threw it into the fire.[1] Instead of that one, a so-called short document[2] was published, drawn up by the French statesmen (probably from previous information received from the ambassadors at Rome), in which it was plainly said that the king was to be subject to the Pope in spiritual *and in temporal matters*.

The forgery of this document is now, as Hefele[3] says, universally acknowledged, except by Huber,[4] who briefly attributes the

sentence above quoted to the Papal Bull. Style and tone do not correspond with those used at Rome, but accord exactly with the answer drawn up in Philip's name. Jacques de Norman—who had had charge of the real Bull—and the cardinals denied that Boniface had ever written to the king that he was subject to him in *temporal matters*,[5] and the Pope denied it himself. Peter Flotte it was who thus forged and deceived, not, however, without the king's knowledge and consent,[6] as was afterwards recognised at Rome. The author of the forgery borrowed a few phrases from the Bull for his composition, made the Pope refuse unconditionally all royal prerogative with regard to interim cases and all the king's rights of conferring ecclesiastical preferments, and endeavoured to excite the pride of the French nation against 'Papal aggression.' He succeeded but too well. 'The well-grounded discontent of thousands over the misrule of the king seemed forgotten, when once it appeared necessary to protect the independence and honour of the French crown.'[7] It is easy to imagine how, by the intrigues of Peter Flotte, all ranks of the people were brought to believe that 'Boniface claimed supreme authority in political affairs;' and with characteristic vivacity at once took the part of their crafty sovereign.

[1] Christophe, i. p. 92. Hefele, p. 297.
[2] Dupuy, Preuves du Diff. p. 44. Bulaeus, iv. 7.
[3] Hefele, p. 298. Christophe, l.c. Cf. Spondan. a. 1301, n. 11; De Marca, de Conc. Sac. et Imp. iv. 16; Bianchi, l.c. § 6, n. 4, p. 485; Döllinger, Lehrb. der. K.G. ii. p. 239 seq.; Phillips, K.R. iii. § 130, p. 253.
[4] Huber, p. 37.
[5] Preuves du Différend, pp. 63, 73, 75.
[6] Drumann, ii. pp. 24-26. Boutaric, l.c. p. 106. Hefele, l.c.
[7] Hefele, p. 300.

§ 12.

In order to win the clergy to his side, and to make it appear that he greatly esteemed the laws of the Church, Philip allowed the imprisoned Bishop of Pamiers and Archdeacon Jacques to withdraw; both of them were to leave the country as soon as possible.[1] A letter, pretending to be an answer from the king[2] to the forged Papal document, and written in the same terse

style, was published in France; but, naturally, not officially forwarded to Rome.[3] As the publication from Rome had been met by an answer from the king, so against the Council to assemble on All Saints a French National Assembly was summoned. On the 10th April 1302, Philip assembled a parliament of the three estates of his kingdom in Notre Dame. Peter Flotte brought forward bitter complaints against the Pope, whom, he said, not only heavily oppressed the Church in France by taxes, gave away benefices to foreigners, and arrogated all authority to himself, but also endeavoured to subject the king to himself *in temporal matters*, and wished to become temporal ruler of France. As a friend the king begged, and as a sovereign he commanded, that they should stand by him. The nobility, guilty of the same oppressions and having the same interests as Philip, determined in secret conclave with the third class, till now very much oppressed, to sacrifice property, life, everything, for the preservation of the rights and liberties of the nation, and to stand nobly by the king. The clergy, who had originally desired to deliberate longer, were intimidated,[4] accused of treachery to their country, and were at last induced to write to the Pope as the king desired, whilst the nobles and citizens addressed special letters to the cardinals.[5]

[1] Christophe, p. 94.

[2] Dupuy, Preuves, p. 44.

[3] Hefele, p. 301 seq. Natalis Alex. H. E. saec. 13 et 14, diss. 9, a. 2, n. 5 (t. xvi. p. 321, ed. Bing.) says of this letter, though at other times he so warmly defends the king: 'Inscriptio et priora verba, quae immodesta et contumeliosa sunt, aeterna oblivione delenda potius quam in historiam referenda.'

[4] The French prelates of that time, with but few exceptions, were far from maintaining the resolute bearing of their predecessors. About 1172, Archbishop Rotro of Rouen wrote: 'Regiae majestati non congruit depopulari quod suum est aut illas expugnare Ecclesias, quarum tutor est et patronus. Si alius nos infestaret, non aliunde remedium quaereremus' (Petr. Bles. Ep. 28, p. 68).

[5] Christophe, pp. 96, 97.

§ 13.

The letter written by the clergy[1] announced these events to the Pope, 'not without grief and bitter tears,' as well as the

prohibition laid by the king and his barons on their going to Rome. In the insolent letter sent by the nobles to the cardinals, they avoided calling Boniface VIII. Pope, and enumerated the king's grievances, which were: (*a*) the presumptuousness of the words used in the Papal Brief and by the ambassadors, that the king was subject to Boniface *in secular matters*, and held his kingdom from him; (*b*) the summons of the bishops, abbots, and doctors to Rome, when it was felt to be so necessary that the king should be at the head of any reform; (*c*) the bestowal of the most important ecclesiastical posts, for good sums of money too, upon unknown, treacherous, and incapable persons; (*d*) the endeavour to deprive the king of the power of disposing of the benefices belonging to him, with the object of further burdening the country. The writers of the letter did not wish to believe that the Pope had been able to take such intolerable measures with the consent of the cardinals, and begged them urgently, as *partakers in the government of the Church*, each to help to bring these proceedings, begun in so disorderly and wanton a manner, to a good termination, so that, preserving and increasing the love between the Church and France, a Crusade might become possible.

[1] Dupuy, Actes et Preuves, p. 67. Bulaeus, t. iv. p. 19 seq. Christophe, pp. 332-335. Cf. Hefele, pp. 302, 304.

§ 14.

On the 26th June the cardinals wrote a detailed and dignified answer to the French nobles.[1] They spoke of their grief at the contents of the document addressed to them, of their agreement with the Pope, and the wish they shared with him for the preservation of the close alliance between the Roman Church and France; also of their conviction that *an enemy* had been sowing tares, and had thereby occasioned the dispute. They emphatically contradicted the statement that the Holy Father had ever written, or allowed his nuncios to say, that King Philip was subject to him *in temporal matters as regarded his kingdom*, and that he had received it as a fief from him.[2] The convocation of the prelates and other Frenchmen was nothing

new—a proof, like the Papal Bull, of good-will and paternal solicitude. If the Pope had injured the French Church in the matter of temporal possessions, it had been done *only upon application from the king*, and to oblige him. Bishoprics had only been disposed of to two foreigners, Italians, and distinguished men.[3] Lastly, the cardinals censured the improper way in which the Pope was mentioned in the document sent by the nobles, and which almost seemed to imply that they did not wish to recognise him as Pope.

The Pope, personally most deeply insulted by the events in Paris, and by the offensive reply which was published in France with the forged Brief, could not contain his indignation at the thought of the disgraceful treatment he had met with, and of the inconstancy shown by the French prelates, *many of whom had previously appealed to him* against the oppressions of their king; he showed his feelings in his answer to the French clergy.[4] In bitter irony he turns Peter Flotte, the originator of the intrigue, into ridicule,[5] lashes the cowardice of the prelates, and threatens canonical punishment in case of further disobedience to the instructions of the Apostolic See.[6]

[1] Bulaeus, iv. p. 26. Dupuy, p. 63. Hefele, pp. 306-308.

[2] Volumus vos pro certo tenere, quod D.N. summus Pontifex numquam scripsit regi praedicto, quod *de regno suo sibi subesse temporaliter illudque ab eo tenere deberet*, et Mag. Jacobus archidiaconus Narb., notarius et nuntius, sicut constanter affirmat, ipsi D. Regi hoc ipsum vel simile numquam verbaliter nunciavit aut scripto. Unde propositio, quam fecit Petrus Flotte, arenosum et falsum habuit fundamentum et ideo necesse est quod cadat aedificium.

[3] These were Aegidius of Rome, an Augustinian, pupil of St. Thomas, sometime professor in Paris and tutor to King Philip, at whose wish Boniface raised him to the archbishopric of Bourges; and Gerard Pigalotti, likewise professor in Paris, who received the see of Artois.

[4] Raynald. a. 1302, n. 12. Bulaeus, l.c. p. 24. Dupuy, p. 65. Hefele, p. 308.

[5] Semividens corpore, menteque totaliter excoecatus—Belial.

[6] Christophe, p. 99.

§ 15.

In August 1302 the envoys of the king and of the clergy of France were present at a great consistory, which was opened by the Cardinal-bishop of Porto, with a speech concerning

the existing subjects of dispute.[1] He represented that no difference of opinion existed between the Pope and the College of Cardinals, and the Bull 'Ausculta fili' had been issued with the consent of the cardinals, after mature deliberation; that numerous complaints had come from France to the Holy See of the way in which the liberty of the Church was abused and despised, and therefore it had become necessary to admonish the king. He praised the Papal Bull, which contained the words of a loving father, but did not contain the sentence attributed to it—that the king must consider his authority *as bestowed by the Church*, which Archdeacon Jacob had also never said; he denied that another writing (the so-called short Brief 'Deum time') had been issued by the Pope or the cardinals. 'If prelates are called to Rome to deliberate, it is not the opponents of the king, but his special confidants who are summoned; and not to the end of the world, but to Rome; nor to remain there for a long time, but to return home as soon as the business is finished. With regard to the giving away of benefices, the right of patronage with presentation must be distinguished from collation with putting into possession. The latter can never be allowed to a layman. If it is anywhere said that the king has further right of patronage, at least it is impossible that anything beyond what the Church bestows (ministerialiter) can belong to him.[2] But if it is said that he has the right by prescription, then I ask, Why (supposing he can dispose of the benefices by his own authority) does he apply to the Church for a concession?' Further, it was especially shown that in cases of sin the Pope has to decide about temporal matters; and it was shown that the possession of the temporal jurisdiction belonged by right to the Pope, but by custom and in practice to the temporal princes; this was illustrated by the simile of the two lights in the firmament of heaven.[3] In conclusion, the cardinal said that King Philip had no ground of complaint, and that he and the other cardinals would pray to God for his enlightenment, and for his return to the position of a true son of the Church.

[1] Dupuy, l.c. p. 73. Bul. p. 28 seq. Hefele, pp. 309-311. Natal. Alex. l.c. n. 6, pp. 321, 322.

[2] Hefele explains: 'So far as in the quality of Papal minister or vicar it had been granted him by the Pope.' To me it seems that the 'by concession of the Church' is put in opposition to the 'jus proprium,' the rights inherent in the crown.

[3] 'Scriptum est: Fecit Deus duo luminaria magna. . . . Jurisdictionem spiritualem principaliter habet summus Pontifex et jurisdictionem temporalem habent imperator et alii reges, tamen de omni temporali habet cognoscere S.P. et judicare *ratione peccati*. Unde dico quod jurisdictio temporalis potest considerari prout competit alicui *de jure* [in contradistinction to ratione actus et usus]. . . . Unde jurisdictio temporalis competit summo Pontifici, qui est vicarius Christi et Petri, de jure. Et qui contrarium sentit, impingit in illum articulum: *Judicaturus est vivos et mortuos* et in illum: *Sanctorum communionem*. Sed jurisdictio temporalis *quantum ad usum et executionem actus* non competit ei, unde dictum est Petro: *Converte gladium in vaginam*.' These are the ideas of St. Bernard as they are represented by Aegidius of Rome (de Eccl. Pot. l. i. c. ix.): 'Ecclesiam habere decet materialem gladium *non ad usum*, sed ad nutum.' Thus in France they were by no means so new and unheard of as necessarily to cause offence.

§ 16.

The Pope, referring in his speech to the passage of Scripture, 'What God hath joined together let no man put asunder' (Matt. xix. 6), showed how France had been benefited by the alliance between her kings and the Church since the time of the baptism of Clovis. Peter Flotte was the man (the enemy) (Matt. xiii. 28) who desired to separate what God had joined together, and his companions were the Count of Artois and the Count of St. Pol. Flotte had falsified the Papal Bull, or had given out its contents falsely,[1] as, for instance, that the king must consider his kingdom as a Papal fief. Concerning this, Boniface remarks, 'It is forty years since we mastered jurisprudence, *and we know that God ordains that there shall be two powers*; who then can or dare believe that *such a foolish sentiment* came from us? We declare that *we do not desire to trespass on the king's jurisdiction in anything*. But neither the king nor any other Christian can deny that *in matters of sin* he is subject to us.'[2] With regard to the giving away of benefices, the Pope observes that from zeal for truth, and for the salvation of the king, he had often said to the royal ambassadors: 'We desire that the king do lawfully what now he does unlawfully. We desire to show him the greatest possible amount of favour: for

it is certain and all laws proclaim that the collation of benefices in itself cannot belong to a layman, for he would then have a right to transfer the spiritual power. He can only receive the right of collation with the consent, tacit or express, of the Holy See.' We have, he continued, allowed the king to appoint a canon in each of the sees of his kingdom; we entirely made over to him the appointing of the prebends to the Church of Paris, on the condition that he disposed of them only to masters of theology, or doctors of law, or other learned persons, and not to nephews and relations of this or that person. But neither the king nor any prelate had bestowed a benefice on a master of theology, but only on worthless favourites. Although Boniface felt he was perfectly right, still he declared himself ready, in case he had gone too far, to make amends for the fault. He proposed the cardinals as arbitrators between himself and the king, and also that the latter should despatch some of the upright members of the nobility (not the satellites of wickedness), perhaps the Duke of Burgundy, the Count of Brittany, and such-like, who could tell him in what he had erred and whom he had troubled. He would redress the grievances according to their judgment, and make even still greater concessions with regard to the patronage of benefices.

[1] Qui literam nostram falsavit vel falsa de ea confinxit. Cf. De Marca, de Conc. iv. 16, 5. Bianchi also says (l.c. § 7, n. 11, p. 530): 'I sentimenti di questo Pontefice stranissimamente allora ed oggi travolti ed interpretati.'

[2] Hefele (p. 298) justly remarks that Boniface, in the Brief Ausculta, according to the tenor of the whole, only claims a subjectio ratione peccati; according to which it is not the government transactions in themselves, but only those which contain a peccatum, which are laid under the cognisance of the Pope. '*This proves a great difference in principle;* for even now, in the completely altered state of the world, it can be said: however independent a Catholic king may be from the Church in his administrative transactions (in temporalibus), still as to the sins which he commits in regard to these transactions he is in a certain degree of subjection to his confessor. The latter has the right and the duty to admonish, to blame, and to lay a penance upon him for such sins, and this not only when he voluntarily accuses himself, but also when the matter in question is publicly known. During the Middle Ages, however, the Pope considered himself the spiritual director of the Christian princes.' He is in fact the superior, who gives directions for the guidance of consciences even to

confessors; he is the interpreter of the divine law. 'Innocent III. had already in 1204 .... laid down the same principle and the same distinction.'

§ 17.

This very fair offer would have made a most suitable conclusion to the Papal address. *If the whole speech is genuine*, Boniface said much that was offensive to French ears. He showed that the king would scarcely have a firm hold on the throne without the Pope; that when necessary he was ready to depose the king, as his predecessors had before deposed three kings of France;[1] that the prelates were obliged to appear in Rome, under pain of deposition,[2] &c. But several words do not thoroughly accord with former expressions in the speech; we cannot be certain whether the record of the Pope's speech, found in the codex of the convent of St. Victor in Paris, corresponds to the *real contents*.[3]

[1] 'Our predecessors have deposed *three* Kings of France; you have it in your chronicles, we have it in ours, and one of them is to be found in the Decretals' (Gratian, can. Alius, c. xv. q. 6. Cf. Ivo, Decr. P. v. c. 378, concerning the case of Childeric III.). It is not evident what other cases were alluded to in the speech. *Three* cases of this sort were never brought forward. This passage, like others in the speech, has the look of being spurious.

[2] 'If some do not come, the words of the Song of Solomon (ii. 12) will apply: Tempus putationis advenit.' This text is also used in the same way by St. Bernard (Ep. 240, c. ii. ad Eugen. III. p. 433).

[3] We have in other preserved allocutions of this Pope considerable variations in the manuscripts. Cf. J. D. Mansi, note in Natal. Alex. l.c. a. 2 fin. p. 332. Much still remains here to be accomplished.

§ 18.

The Duke of Burgundy's attempted mediation bore no fruit. Philip IV. had forbidden the clergy and laity to leave France without the royal permission, and also the export of gold and money, ordered the property of thirty-nine bishops and six abbots, who in spite of all had attended the Synod at Rome, to be confiscated. The decrees of the Synod opened in Rome on the 30th October 1302 are lost. We only know of two Bulls as the result of the consultations in Rome. By the first all those who detain or otherwise injure any persons travelling to

or returning from the Holy See are excommunicated;[1] the other, the Bull 'Unam sanctam,' declares, without special reference to France, the duty of obedience towards the Pope to be general.

[1] Dupuy, p. 83. Raynald. a. 1302, n. 16. Mansi, xxv. p. 98 seq. Cf. c. un. Rem non novam, ii. 3, de dolo et contum. in Xvagg. com. Several Synods had formerly protested against this; for instance, the Synods of Ofen, 1279, can. 58; Würzburg, 1287, c. 25 (Mansi, xxiv. 299, 861; Hefele, vi. pp. 176, 221).

Part II. The Bull 'Unam sanctam.' Continuation of the Dispute.

§ 1. Substance and object of the Bull 'Unam sanctam.' § 2. Personal conflict with the Pope. His attempts at mediation. § 3. The king's reply. § 4. New treaties. § 5. Open complaints against the Pope. Appeal for a Council. § 6. Measures taken by the Pope. § 7. The outrage at Anagni. § 8. Release and death of the Pope. § 9. The position of Benedict XI. § 10. The king's document. § 11. Indictment of the deceased Pope. § 12. Mitigation of earlier decrees. § 13. Bull 'Flagitiosum scelus.' § 14. Transactions concerning Boniface VIII. § 15. Council of Vienne. § 16. Judgment upon Boniface VIII. § 17. Efforts of Philip IV. to raise the civil over the spiritual power.

§ 1.

The Bull 'Unam sanctam,'[1] which has been so much discussed, explains that Christ is the Head of the one Holy Catholic and Apostolic Church,[2] and that St. Peter and his successors, to whom the Lord has intrusted *all* His sheep, are His representatives. Referring to St. Luke xxii. 38, the Bull says further that there are two swords within the power of the Church, the spiritual and the material sword. The latter is drawn *for* the Church, the former *by* the Church; this one by the hands of the priests, the other by the hand of kings and warriors, but according to the will of the priests and only as long as they allow it.[3] One sword, however, must be subject to the other, and temporal authority must be subject to spiritual power; the Apostle says (Rom. xiii. 1): 'For there is no power but from God; and those that are, are ordained of God.' But they would not be ordained if one sword was not

subject to the other, and if the inferior was not drawn upwards by means of the other (superior).[4] As truth testifies, the spiritual power has to teach (instituere) the civil power.[5] If 'instituere' is to be translated to appoint instead of to direct,[6] at all events it can only apply to the anointing and crowning, and not to the elevation to the dignity; Boniface VIII. expressly acknowledges *two powers ordained by God.* At the conclusion follows the precise definition that every human creature has to submit to the Roman Pontiff.[7] As Christophe remarks,[8] this constitution was clearly dictated with the view of declaring 'that in the Christian Church there is only one power instituted directly by God; further, that as the society of the faithful also comprises the society of citizens, this power is twofold, if I may so express myself, since it divides itself into spiritual and civil, the former being represented by the Pope, the latter by the princes. Given this principle, it naturally follows as a result that the spiritual power is raised above the civil on account of its superiority; the civil is dependent on the spiritual, is obliged to follow its lead, and perhaps even to be corrected by it. There is no question here of special ordinances for France, but of general principles applicable to all Christian States.[9] Boniface does not assert that the authority which he has over kingdoms is the same as that of a feudal lord over a fief; he only claims the superior power of judging princes with regard to the administration of their States (in as far as this affects the Church), and to correct their faults by means of apostolic decrees; and such a claim certainly had its origin in the public law then in force. Philip the Fair, who with such determination, rejected this claim as unheard-of, ought to have remembered that the great Innocent III. in his struggles with Philip Augustus considered it an indisputable privilege of the successors of St. Peter.[10] With regard to the conclusion of the Bull, in which it is said that every human being is subject to the Popes, it is certain that it is not stronger than what goes before. The Gallican Bossuet[11] and P. de Marca are astonished at its moderation.[12] Is it not an unexceptionable article of Catholic faith that every Christian should be subject to the

Vicar of Christ? If individuals are subject to the highest jurisdiction, why should princes be exempt from it?'[13]

[1] C. i. de M. et O. i. 8, in Xvagg. Com. Rayn. a. 1302, n. 13. Ap. Christophe, p. 335 seq.

[2] The Bull says: 'She is the seamless garment of the Lord, which was not torn, but for which lots were cast (John xix. 23, 24).' Similarly, Petri Bles. Ep. 28, pp. 96, 97; Innoc. II. Ep. ad Episc. Gall. 1140, de Erroribus Petri Abael. (Epist. Bernard. n. 194, p. 360, c. i.).

[3] '*Ad nutum* et ad patientiam sacerdotis.' St. Bernard (infrà, Essay xiii. P. i. § 3) also has the first expression (ad nutum sacerdotis), and from him the passage is taken; he, however, adds: 'et jussum imperatoris.' John of Paris explains the ad nutum: 'Quia in hoc non habet auctoritatem jubendi vel compellendi, sed solum innuendi, si voluerit et imperator' (ap. Natal. Alex. l.c. a. 2, n. 11; p. 327). Anselm of Canterbury also says: 'Nota, *duos gladios* esse *in Ecclesia:* alter materialis, alter spiritualis, sed spiritualis nonnisi volentes, materialis vero etiam cogit nolentes' (Com. in Matt. c. xxvi.), but he does not carry the similitude so far as St. Bernard. Sigismund's words in the Council of Constance are analogous to the above. Cf. Gregory IX. 18 May 1233, ad German. Patr. Cpl. Mansi, xxiii. 59, and Aegidius of Rome, de Eccles. Potestate, l. i. c. vii.-ix.

[4] Aegidius Romanus, de Eccles. Potest. l. i. c. iii.: 'Non est potestas nisi a Deo, sed et omnis habet ordinata esse, quoniam .... quae sunt a Deo, oportet ordinata esse. Non essent autem ordinata, nisi unus gladius reduceretur per alterum et nisi unus esset sub altero.'

Cf. Aegid. l.c.:

Quoniam, ut dictum est per Dionysium, hoc requirit lex divinitatis, quam Deus dedit universis rebus creatis, et hoc requirit ordo universi, i.e. universarum rerum creataram, ut non omnia aeque immediate reducantur in suprema, sed infima per media et inferiora per superiora. Gladius ergo temporalis tamquam inferior reducendus est per spiritualem tamquam per superiorem, et unus ordinandus est sub altero, tamquam inferior sub superiori.

Boniface VIII.:

Nam secundum B. Dionysium lex divinitatis est, infima per media in suprema reduci. Non ergo secundum ordinem universi omnia aeque ac immediate, sed infima per media, et inferiora per superiora ad ordinem reducuntur.

John of Salisbury (Polycr. vi. 25, p. 626) expresses the idea of the Areopagite writings thus: 'Sic ergo cohaereant inferiora superioribus, sic universa membra se subjiciant capiti, ut religio servetur incolumis.'

[5] Aegid. l. i. c. iv.: 'Quod spiritualis potestas instituere habet terrenam potestatem, et si terrena potestas bona non fuerit, spiritualis potestas eam poterit judicare.'

The Bull continues: 'Thus the prophecy of Jeremias: See, I have this day set thee over the nations and over the kingdoms, &c., is true of the Church and of the ecclesiastical power.'

Even in 431, at Ephesus, Bishop Theodotus of Ancyra used this passage from Jeremias in the same sense, when in the introduction to his third Homily (Migne, PP. Gr. t. lxxvii. p. 1385) on ecclesiastical power he

says: '*Priests also have a sword*, not in order to wound, but to cure. Grace has already announced this in the words of Jeremias: See, I have this day set thee over the nations and over the kingdoms, &c. For holiness cannot be sown *till wickedness has been rooted out*.' The passage was used in the same way in the Byzantine Synod, under Mennas, 536, act. 4 (Hard. ii. 1260), and in a letter from Oriental bishops to Pope Symmachus in 512. Jer. i. 10 is combined with Matt. xvi. 18 (Baron. a. 512, n. 50) in the same way in a letter of the Patriarch of Jerusalem to John II. of Constantinople (Hard. ii. 1243).

Again the Bull continues: 'Therefore should the earthly power transgress, it is judged by the spiritual power; should the spiritual power transgress, the lesser is judged by the higher; but if the highest spiritual power should transgress, it can be judged by God alone and not by man.' Cf. Aegidius, l.c.: 'Si deviat ergo terrena judicabitur a potestate spirituali tamquam a suo superiori; sed si deviat potestas spiritualis et potissime potestas summi pontificis, a solo Deo poterit judicari.'

The Bull goes on: 'As the Apostle attests: He that is spiritual judgeth all things, yet he himself is judged of no man (1 Cor. ii. 15).'

Later writers have followed the extensive use made of this text by Irenaeus (Adv. Haer. l. iv. c. xxxiii. n. 1 seq., specially n. 7). Thus Hugo a S. Victore, de Sacram. l. ii. P. ii. c. iv. Aegid. Rom. (l.c. c. ii.): 'Quod summus pontifex est tantae potentiae, quantae est ille spiritualis homo, qui judicat omnia et ipse a nemine judicatur.' Against this remarks Joh. de Parisis (ap. Natal. Alex. l.c. n. 14, p. 327): 'Licet illa auctoritas *frequenter* assumatur et in diversis casibus pro auctoritate D. Papae, tamen non est ad propositum, quia non accipitur ibi homo spiritualis de spirituali potestate, quam habet ecclesiasticus judex, quum habens interdum hanc potestatem spiritualem sit *animalis*, ut ibi accipitur, sed dicitur animalis homo vita vel sensu. . . . *Vita* quidem dicitur spiritualis, qui secundum Deum habens rationem animam suam regit; spiritualis autem *scientia* est, qui non secundum humanum sensum, sed Spiritui S. subjectus per fidem de Deo judicat certissime et fideliter. Unde talis judicat omnia,' &c. Anonym. de Pot. Papae (ib. p. 328): 'Apostolus non loquitur ibi *de judicio jurisdictionis*, quod competit alicui per supremam impositionem, sed *de judicio discretionis*, quod habetur per internam inspirationem.'

[6] Hefele, p. 317. Berchtold, p. 28. Schulte, i. p. 31. Allg. Zeit. 26 Dec. 1870.

[7] From Thom. Aqu. Opusc. c. Graec. c. xxv. p. 257.

[8] Christophe, l.c. i. pp. 102, 103.

[9] Petrus de Marca, Concord. Sac. et Imp. l. iv. c. xvi. n. 3.

[10] The view taken in the introduction is based on c. Novit de judiciis (infrà, c. xiii. P. i. § 14 seq.), Spondan. a. 1302, n. 11, Bianchi, t. i. l. i. § 10, n. 2, p. 93, against Bossuet, l. iii. c. xxii. pp. 319, 320, who wrongly says that the Decretal Novit is not to the point here. The principle is quite the same; the potestas indirecta is understood under the figure of the material sword.

[11] Defens. Decl. Cleri. Gall. l. iii. c. xxiii. p. 326: 'Eo viam sibi parasse videbatur, ut Rom. Pontifici omnem potestatem esse subditam, etiam in temporalibus, pro certo fidei dogmate definiret. *At profecto non eo usque*

processit; hoc enim tantum habet *definitio: Porro subesse Rom. Pontifici omnem humanam creaturam declaramus, dicimus, diffinimus et pronunciamus omnino esse de necessitate salutis*, quod quidem est verissimum et apud Catholicos certum, si de spirituali potestate intelligatur.'

[12] Also Natal. Alex. (l.c. a. 2, n. 10, p. 324) does not find in the Bull the view which the Frenchmen of the time pretended that it contained; but he only finds in it the 'indirecta in temporalia regum potestas,' which indeed he equally disputes.

[13] Christophe, l.c.

§ 2.

The Dominican John of Paris[1] and others[2] subsequently attacked this Bull, which they interpreted in the sense of a direct power over temporal matters, and sought to invalidate its argument. But far from carrying on the dispute as a question of *principles*, Philip's party turned it into a *personal* quarrel. They desired to make a more direct attack upon the Pope, to stigmatise him as an unlawful Pope, a heretic, and a simonist, and to heap up accusations against him. After the deaths of the Comte d'Artois and Peter Flotte, William of Nogaret, keeper of the seals and closely bound up with the Colonnas, remained the Pope's chief enemy. In the mean time Philip had it announced in Rome that he no longer acknowledged the Pope as arbitrator in his war with Flanders and England.[3] The Pope was said to have excited both these countries against Philip;[4] but there are proofs of his conciliatory dispositions. In an attempted mediation[5] the following conditions for a peace were demanded:[6] 1. That the king should recall the prohibition which he or his officers had laid on the journey to Rome, together with the penalties attached to it. 2. That he should acknowledge the Pope's original right to bestow ecclesiastical offices, and the necessity of his tacit or expressed consent to the appointments being made by a layman,[7] and also 3. the right of the See of Rome to send legates into particular States without needing the permission of any one. 4. That he should likewise acknowledge the right of the clergy in the administration of ecclesiastical property, and the Pope's right of supreme direction over it and over any taxation laid on it. 5. No layman, not even a prince, should have the right to lay hands on the possessions of the clergy, to burden them with a rent, to summon ecclesiastics before

his courts of justice, or to arrest them on account of personal conduct or on account of immovable goods, unless these were feudal possessions. 6. That as the king allowed Papal documents with portraits of the Princes of the Apostles to be burnt in his presence, he must either account for such an unheard-of act or receive punishment for it, particularly by forfeiting the privileges bestowed upon him by the Holy See. 7. That the king shall no longer abuse the so-called regalian rights, seize vacant churches, or keep the interim revenue of future bishops. 8. Spiritual jurisdiction must be given back to the prelates again, but without detriment to acquired privileges, so that in some cases the laity might exercise such jurisdiction. 9. That as the debasement of the coinage and the extortions of the royal officers had done great damage to the clergy and the people, the king must make them some indemnification. 10. Further explanations would be necessary of the bad reception given to the nuncio Jacques Norman and to the Bull of December 5 which he brought with him. 11. The town of Lyons must be acknowledged to belong to the archbishop, and not to the king. If no amendment was made within the time agreed upon by Prince Charles and the ambassadors, the Pope would take more severe measures.

[1] Tract. de Potestate Regia et Papali (Goldast. Mon. ii. 108 seq.) denies the direct power, but allows an indirect one, *e.g.* p. 132: 'Papa non instituit regem, sed uterque est a Deo institutus suo modo; nec eum dirigit *per se*, ut rex est, sed *per accidens*, in quantum convenit regem *fidelem* esse, in quo instruitur a Papa de fide, non de regimine.' Cf. about this, Neander, K.G. ii. pp. 685-687, 3d edit.

[2] Thus the author of the 'quaestio in utramque partem disputata de potestate regia et pontificali' (Gold. ii. 95 seq.). Cf. Neander, l.c. p. 684 seq.

[3] Dupuy, p. 84. Notices et Extraits de ms. de la Bibl. Imp. xx. 145.

[4] Nicol. Trivet, Annal. p. 396. Rayn. a. 1302, n. 17 fin. Hefele, p. 319.

[5] Baillet, p. 172. Spondan. a. 1303, n. 2. Raynald. h.a. n. 15. Christophe, p. 104.

[6] Dupuy, Preuves, p. 90. Raynald. l.c. n. 34. Hefele, pp. 319, 320. Christophe, pp. 104, 105.

[7] In quibuscumque beneficiis ecclesiasticis conferendis, vacantibus in curia vel extra curiam, Rom. Pontificem summam et potiorem obtinere potestatem, et quod per collationem cujusvis laici in ipsis vel eorum aliquo non potest alicui jus acquiri sine auctoritate vel consensu Sedis Apostolicae tacitis vel expressis.

§ 3.

Philip caused a reply to be made to these articles.[1] 1. The prohibition made against travelling out of the country was occasioned by the pressure of the times, the war in Flanders, and the necessity of preventing possible revolutions. Against 2, 4, 5, 7, he appealed to the usages and examples of his predecessors. He disapproved of the abuses practised by his officers, and would redress them. With regard to the question of the burnt Bull, Philip pretended to have misunderstood article 6, and treated it as if it referred to quite another document. It was evident that the Court was ashamed of that act.[2] Concerning the complaints of the debased coinage and extortion (art. 9), it was replied that State necessities had compelled them to it; part of the distress suffered by his subjects was already alleviated; measures should be taken to remove all complaints. As to art. 11, the king deplored the troubles of the Church of Lyons, but laid them all to the refusal of the archbishop to take the feudal oath, and he declared himself ready to negotiate. He professed himself to be ready to abide by the judgment of the Dukes of Burgundy and Brittany, who were highly esteemed by the Pope.

[1] Dupuy, p. 92. Baillet, p. 175 seq. Natal. Alex. l.c. diss. 9, a. 3, n. 2, pp. 334, 335. Christophe, p. 106 seq. Hefele, p. 320 seq.
[2] Döllinger, Lehrbuch, ii. p. 244.

§ 4.

The moderate tone of this document, so much praised by the Gallicans,[1] clearly shows cunning calculation and crafty deceitfulness, but no upright and conciliatory dispositions. Hefele says: 'Notorious actions were simply denied or all the guilt laid on the officers, the complaints made by the Pope were arbitrarily explained, even intentionally misunderstood, the real point in question was evaded, apparent concessions were made in the vaguest manner.'[2] French diplomacy showed itself in that conflict, as it has in innumerable cases since, dishonest and faithless, as well in the undecided and evasive manner in which

it answered as in that which it left unanswered. In the Brief of April 13, 1303,[3] addressed to Prince Charles of Valois and the Cardinal-legates, Boniface described Philip's answer as very unsatisfactory; for the rest he was perfectly ready to accept the mediation of both the dukes. Beyond this he sent two Bulls to the legates, one of which summoned those French prelates who had not appeared in Rome to come there within three months,[4] but the other announced that King Philip, in spite of his exalted rank and privileges, would incur the penalty of excommunication, which would fall on every one who should prevent the journey to the Apostolic See.[5] Probably the publication of this latter constitution was intended only to take place if the king had rejected all reconciliation, and had thus driven the Pope to severity.[6] If he made no kind of satisfaction, the Pope believed he would be obliged to interfere with all the weight of his spiritual and temporal power (spiritualiter et temporaliter). But it is historically false that just after the Bull 'Unam sanctam' the Pope *deposed* King Philip, and released his subjects from their oath of allegiance.[7]

[1] Natal. Alex. (l.c. art. 3, n. 2, p. 334) says: 'Rex incredibili modestia temperatum responsum dedit.'
[2] Hefele, p. 321.
[3] Dupuy, pp. 95, 97. Raynald. a. 1303, n. 34.
[4] Dupuy, p. 88.
[5] Dupuy, p. 98. Raynald. a. 1311, n. 39: 'Per processus nostros.'
[6] Bianchi, l.c. p. 533. Christophe, p. 108.
[7] Berchtold, p. 29.

§ 5.

But already before the publication of this Bull the passion and blind hatred of the French statesmen had hurried them on to extreme measures. In an extraordinary sitting of the State Council held in March 1303, William Nogaret challenged the king to protect the Holy Church against Boniface, the interloper, false Pope, thief and robber, heretic and simonist, and to convoke a General Council in order to effect his deposition.[1] Philip ordered the bearer of the Papal document to be arrested. The protest of the cardinal-legate remained unnoticed, and he himself was treated with indignity and obliged to escape from

France.[2] The peace concluded with England on May 20[3] left Philip free to oppress the liberty of Flanders and to humiliate the Pope, which he desired still more. The Pope being made acquainted with these events endeavoured to improve his cause thus endangered, and to lessen the number of his powerful opponents.[4]

On June 13, 1303, some thirty prelates who had submitted to the king, several barons and lawyers, were collected together at the Louvre, whereupon the Chevalier William Plasian (du Plessis), Lord of Vezenobre, delivered a lengthy accusation against the Pope, declared himself ready to prove all the statements and to take his oath on the Gospels, and at the same time begged the king as protector of the faith to assemble a General Council. The twenty-nine counts[5] which he alleged on the following day contained the vilest calumnies;[6] for instance, that Boniface did not believe in the immortality of the soul, eternal life, or transubstantiation, that he did not hold fornication to be a sin, compelled priests to violate the seal of confession, practised simony and sodomy, encouraged idolatry, did not keep the fast-days, was possessed with a wicked spirit, consulted soothsayers, was guilty of the loss of the Holy Land as well as of the death of his predecessor Celestine V.,—almost all things which had been noised about for years by the Colonnas, some French priests, and other enemies of the Pope. Plasian declared that he appeared as a complainant against the Pope, not from hatred or passion, but from zeal for the welfare of the Church. He was supported by Count Louis of Evreux, the king's son, Count Guido of St. Pol, and Count John of Dreux. The king assured them that he would direct his efforts to assemble a General Council merely as a matter of conscience and without prejudice to the honour of the Holy See, called upon the prelates to coöperate, and then and there appealed to the future General Council, to the future true Pope, and to anything that could be appealed to. A like proceeding had never before occurred in the French Church. Laymen came forward with the most absurd charges against the head of the bishops.[7] The king, who promised to attend in person at the Council,

desired to sit in judgment over him.[8] An appeal of this kind had never before been brought, except in the case of the Emperor Frederick II., and never at all by France; it was in complete contradiction to the principles of the Church.[9] Five archbishops, twenty-one bishops, and a few abbots declared that they appealed beforehand to the General Council and to future rightful Popes against any censures of Boniface; all possible steps were taken to obtain the agreement of the Paris University,[10] of the clerical corporations, and of the towns and provinces.[11] Nearly seven hundred addresses of agreement were obtained by the royal commissioners sent about for that purpose.[12] Any one who did not voluntarily subscribe to these addresses was forced to do so. John, Abbot of Citeaux, was imprisoned for refusing, as were also the Abbots of Clugny and Premontré, and many Italian monks.[13] The Dominicans of Montpellier were deprived of royal protection in consequence of their opposition, and were ordered to leave the kingdom within three days.[14] Whoever did not consent to this audacious and unecclesiastic appeal was considered a traitor to his country, and what slander had begun was accomplished by violence.[15] Philip then wrote to the other princes and prelates of Europe concerning his projected Ecumenical Synod, and also to the cardinals, to whom he hypocritically protested his fervent and devoted love to the Church.[16]

[1] Dupuy, p. 56. Baillet, p. 169. Drumann, ii. p. 68 seq. Christophe, p. 109. Hefele, p. 322.

[2] Spondan. a. 1303, n. 7. Natal. Alex. l.c. a. 3, n. 3, 4. Hefele, p. 322 seq.

[3] Pauli, Gesch. Engl. iv. p. 156 seq.

[4] Christophe, pp. 109-113.

[5] Dupuy, p. 101 seq. Bulaeus, l.c. p. 42 seq. Hefele, pp. 323-325.

[6] Natal. Alex. l.c. a. 4, n. 1, p. 336: 'Immania accusationum, immo calumniarum capita.'

[7] Against the complaints of laymen, specially those which are personally hostile against bishops, are directed c. 1-3, 14 seq. c. ii. q. 7; c. 8, c. vi. q. 1; Chalc. c. 21 (c. 49, c. ii. q. 7); Conc. Aquisgr. 789, c. 30 (Labbé, ix. 17; Hefele, iii. 624).

[8] Bianchi, l.c. n. 12, p. 535.

[9] Gelas. I. c. 16, 17, c. ix. q. 3; Conc. Rom. 800, sub Leone III. (Hard. iv. 936, 937). Petrus de Marca, l.c. iv. 23: 'Numquam admissa est in Ec-

clesia provocatio a Papa ad Concilium.' Mansi, Animadvers. in Nat. Alex. l.c. pp. 355-362.

[10] It acquiesced in these words: 'Appellationi praefati D. Regis adhaeremus, *quantum de jure possumus et debemus secundum Deum et justitiam et sanctae permittunt canonicae sanctiones;* supponentes nos ac nobis adhaerentes et adhaerere volentes et universitatem nostram protectioni divinae et praedicti Concilii generalis ac futuri veri ac legitimi pontificis.' Dupuy, Preuves, p. 17; Natal. Alex. l.c. a. 4, n. 3, p. 337.

[11] Boutaric, p. 29 seq.

[12] Bulaeus, iv. 46 seq. Dupuy, p. 112 seq.

[13] Const. Super Petri solio, Preuves, p. 184. Christophe, p. 115.

[14] Hist. du Diff. p. 154. Natal. Alex. l.c. n. 7, p. 338.

[15] Christophe, l.c.

[16] Boutaric, p. 111. Hefele, p. 327 seq.

§ 6.

At the news of these proceedings in France, Boniface VIII. cleared himself of the charges brought against him by a solemn oath in a consistory held at Anagni (August 1303), and then issued several Bulls referring to them, well knowing that all the authority of the Church would be annihilated if Philip's proceedings were to gain strength.[1] In one of the constitutions he declared any one who should put difficulties in the way of the publication of the Papal summonses to be excommunicated.[2] Those doctors of the university who, partly mislead and partly ill-treated by the king, agreed to what he proposed or gave him advice, were deprived by the Pope of the power of conferring the right to teach and the academical degrees in theology and in civil and canon law, till such time as the king should offer satisfaction to the Apostolic See.[3] He then suspended the right of election to all ecclesiastical corporations, and reserved the disposal of all ecclesiastical benefices in France to the Apostolic See.[4] In another constitution[5] he censured the accusations and slanders current in France, as well as the appeal to a General Council, the right of convoking which belonged to the Pope alone, and he threatened the king with the punishments of the Church. Therefore Boniface had *not yet excommunicated the king by name;* he still wished to allow him time.

[1] Spondan. a. 1303, n. 9-11. Bianchi, l.c. § 7, n. 15, pp. 542, 543.

[2] Whatever spiritual or temporal dignity they might hold. Const. Rem non novam aggredimur. Dupuy, p. 161. Raynald. a. 1303, n. 40. Tosti, ii. p. 309.

[3] Const. Sedes Apostolica. Dupuy, p. 163. Raynald. a. 1303, n. 38.

[4] Dupuy, l.c. Raynald. l.c. n. 39.

[5] Const. Nuper ad audientiam, ap Dupuy, p. 166. Bulaeus, iv. p. 55 seq. Raynald. l.c. n. 36. Cf. a. 1311, n. 40.

§ 7.

The publication of the Bull[1] of excommunication which, in the mean time, was being prepared never took place. Brutal and treacherous violence was to overcome Boniface VIII. Ever since April, Nogaret had been staying in Italy, gaining followers and soldiers by the means of rich bribes, organising together with Sciarra Colonna a powerful anti-papal party, preparing a cunning attack upon the Pope, who was staying at Anagni. At break of day, Sept. 7, 1303, Nogaret, accompanied by armed men, whom, to his still greater shame, he ordered to carry the standard of the Church of Rome, appeared before Anagni, where he already had an understanding with some of the members of the nobility. Adenolfo, son of Maffeo, who had been an enemy of the Pope for a long time, treacherously opened the gate to him, and with the cry, 'Long live the King of France! Down with Boniface!' they rushed into the town. A rabble collected together, for the most part bought over, and thinking only of the plunder, joined themselves to the enemy, who soon lined the streets and public squares and repulsed the Papal adherents. The town authorities, either from bribery or surprise, took no part in the proceedings; panic reigned everywhere; the cardinals all fled but two. The Papal palace and the church of the Mother of God close to it were surrounded, the latter taken possession of, and the doors and windows of the former broken open; the palace was plundered, everything of any worth stolen, even the archives destroyed. Many valuable documents were perhaps lost amongst them, for which those preserved in France can offer no adequate compensation. The Pope, who was nearly eighty-six years old, maintained his dignity and resolution; in face of the rough soldiery pouring in his only

thought was to die worthily. He cried out to the persons round him: 'Open the doors to my apartments, for I will suffer martyrdom for the Church of God... As I am taken like Christ by treachery, I will die as Pope.' He waited for his murderers, seated on the Papal throne in all the splendour of his dignity, surrounded by the Cardinals Nicholas Boccasini, Bishop of Ostia, and Peter d'Espagne, Bishop of Sabina. At sight of the reverend old man the intruders were deeply moved, stood still, and did not venture to lay a hand upon him.[2] But Sciarra and Nogaret stepped boldly up to the Pope and overwhelmed him with abuse, to all of which he maintained a dignified silence. Nogaret, who, it is said, prevented his companion from actively ill-treating the Pope, presented him with the resolutions of the Paris Assembly, and threatened to have him carried in chains to Lyons, there to be judged and deposed by a General Council. Boniface then said: 'Here is my head, here my neck. For the liberty of the Church I will submit, as a Catholic, as lawful Pope, and as Vicar of Jesus Christ, to be condemned by Patarini; for I desire martyrdom for faith in Christ and His Church.' These words keenly affected Nogaret, for his grandfather had been burnt for the Albigensian heresy. He is said by some to have moved away abashed; but according to others he is said to have pulled the Pope down from the steps of his throne, amidst scornful cries from his comrades of 'Maledictus Malefacius' (Cursed malefactor), and allowed Sciarra to ill-treat him. No certainty can be attached to Nogaret's later denials, for he has contradicted other things which cannot be doubted. The Pope and his suite were made prisoners; he was kept without food for a long time, in the hopes of forcing him to abdicate or to recall his Bull; and his followers were insulted, robbed, and ill-treated.[3]

[1] Dupuy, p. 182 seq. Bulaeus, p. 57. Raynald. a 1311, n. 44. Spondan. a. 1303, n. 11. Natal. Alex. l.c. a. 5, n. 1, p. 342. Many do not hold the Bull to be genuine (Bianchi, l.c. n. 15, p. 544).

[2] Giov. Villani, Istoria Fior. l. viii. c. lxiii. S. Antonin. Summa Hist. t. iii. tit. 20, c. viii. p. 21. Franc. Pipini, Chron. l. iv. c. xli. Thomas Walsingham, Hist. Angl. in Eduard. I. l. i. Ferrettus Vicentin. in Bonif.

l. iii. p. 1002. Istoria Pistolesi (Murat. t. xi. p. 529), Chron. Parm. a. 1303, p. 848.

[2] Christophe, pp. 119, 120. Drumann, ii. p. 114 seq. Hefele, p. 330.

§ 8.

The blow had succeeded; but the conspirators were undecided what was next to be done. It appears that they did not consider it advisable to carry the Pope away from Anagni, for fear of being attacked on the way by his adherents. Two days were thus let to pass away. But on the third day the citizens of Anagni made an effort, roused by the outrage done to their countryman and benefactor, and led by Cardinal Lucas del Fiesco. Amidst cries of 'Long live the Pope! Death to the traitors!' they drove away the French and the Colonnas party, and set the Pope at liberty with every mark of respect.[1] In the evening of the same day, it is said that Boniface, who in a time of utmost need had shown extreme courage,[2] held a consistory, and pardoned the rioters of Anagni, with the exception of the robbers and traitors. The Pope also pardoned Reginald da Supino, who had held him prisoner, and who now in his turn was seized, together with his children, and also the faithless Cardinal Richard of Sienna, and Napoleon Orsini.[3] 'I do not know,' says Christophe,[4] 'any more touching, high-minded, or heroic trait in history than of this venerable old man, who had no other answer to the unheard-of outrage, which he might have sought to avenge, than the words: "I forgive." And it must not be forgotten that this old man is the "passionate," "implacable," maligned Boniface.' At this turn of events the conspirators united with all the enemies of the people of Anagni, with Ferrentino and Alatri, and inflicted what harm they could on the town; whereupon all participators in the imprisonment of the Pope were banished from the town, and those who interceded for them were punished.[5] For centuries the remembrance of this outrage remained alive in Anagni,[6] and Dante[7] has vividly described it. Soon afterwards Boniface returned to Rome, accompanied by armed men who had been sent from there to protect him; he was received with lively joy, but soon found

himself watched and tyrannised over by the powerful Orsini. Enfeebled in body but strong in mind, he died of a violent fever on October 11, 1338,[8] having again made a solemn confession of faith. The idea that he killed himself in madness and despair[9] is a fiction invented by his enemies; when his coffin was opened, October 9, 1605, no trace of a wound was discovered.[10]

[1] Pappencordt, p. 338.

[2] Pipini, Chron. l. iv. c. xxi.: 'Magnanimitatem et constantiam semper ostendit.' Natal. Alex. l.c. a. 5, n. 2: 'Conjuratos incredibili magnanimitate exspectavit.'

[3] Thom. Walsingham, l.c. Joh. Rubeus, Bonifacius VIII. et familia Gaetanorum principum, Romae, 1651, p. 216.

[4] L.c. pp. 120, 121.

[5] The edict ap. Rubeus, l.c. pp. 338-341.

[6] Fr. L. Alberti, Descrizione di tutta l' Italia, 1550, f. 146. Pappencordt, l.c.

[7] Dante, Purgat. xx. 86.

[8] Christophe, p. 121. Pappencordt, pp. 338, 339. Hefele, pp. 330, 331.

[9] Ferret. Vicentin. p. 1005 seq.

[10] Spondan. a. 1303, n. 16. Raynald. h.a. n. 44. Rubeus, l.c. p. 346 seq. Wiseman, Essays on various Subjects, iii. 219 seq.

§ 9.

Boniface VIII., who after his famous 'Liber Sextus' is chiefly celebrated for the institution of jubilees and for the establishment of the Roman University,[1] was followed even beyond the grave by the hatred of the French. Unfortunately his immediate successor, the pious Nicholas Bocassini, of the order of the Dominicans, under the name of Benedict XI., only carried on the pontificate from October 22, 1303, to July 7, 1304. He endeavoured in the mildest and most conciliatory manner possible, without detriment to justice, to reëstablish peace. He was in a very critical position in Rome; they were divided into many parties there, and even in the College of Cardinals French influence threatened to become powerful. The Colonnas had reappeared; the Ghibellines raised their heads defiantly.[2] Benedict abolished the condemnation published by his predecessor against the Colonnas, gave them back those of their possessions which had not passed into other hands; but he forbade the rebuilding Palestrina, and did not allow the two cardinals of the

family to take part in the functions of the Sacred College.[3] He also wished to reëstablish peace with France, without violating the dignity of the Apostolic See. Prior Peter de Paredo, who had been sent to Italy by King Philip on different commissions, delivered a memorial of complaints against the late Pope, in which the resolutions drawn up at Paris in June were given, and the convocation of a General Council at Lyons, or any other town agreeable to the king, was proposed. Benedict gave no official answer to these unauthorised agents, but he let Nogaret understand by means of a French prelate that the state of things was no longer the same since the change in the pontificate, no steps were to be taken till new instructions should be agreed upon, and he declared his desire to adjust the unhappy discord. In Paris it was decided to send a new ambassador to the new Pope.[4]

[1] Christophe, p. 122.
[2] Christophe, p. 125 seq.
[3] Hefele, pp. 345-347. Cf. c. Dudum, v. 4, de Schismat. in Xvagg. Com.
[4] Dupuy, Hist. du Diff. p. 25; Actes et Preuves, p. 209 seq. Baillet, p. 235 seq. Christophe, p. 138 seq. Hefele, p. 348 seq.

§ 10.

The outrage at Anagni had caused great indignation even in France against Nogaret and the king.[1] Nogaret therefore advised an explanation to be made with the Holy See; but also at the same time a vindication of the outrage to be attempted. In the eyes of contemporaries this could be done best by condemning Boniface VIII. as a heretic, as well as by treating him as the originator of the strife; if that could be made out, Philip and Nogaret would no longer be offenders, but true knights and deliverers of the Church. The king agreed to this plan, and did everything to further it.[2] He congratulated the Pope on his accession; in his letter to the Pope[3] he contrasted him very favourably with his predecessor, and whilst abusing Boniface showered praises on Benedict: the former was to be branded in every kind of way, while the latter was to be won over. The

king recommended himself, his kingdom, and the French Church very warmly to his favour. Some of the followers of Boniface VIII. who had been imprisoned were set free, not without ransoms, however; and preparations were made for the mitigation of the prohibition laid on exportation.[4]

[1] The memorial (Notices et Extraits des mss. xx. 2, p. 150 seq.), probably drawn up by Nogaret at this time, shows this. Cf. Schwab, in the Tüb. Quartalschrift, 1866, i. p. 23 seq.
[2] Hefele, p. 349.
[3] Dupuy, p. 205.
[4] Hefele, pp. 349, 350.

§ 11.

In the presence of the French ambassadors Benedict absolved the king from all excommunication, for whatever reason it had been incurred, and sent him the intelligence in a friendly letter on April 2, 1304. But he expressly describes his act as one of apostolic clemency towards an erring sheep,[1] and admonished the king to receive it in all humility, and to be obedient to the Church. With regard to the convocation of a General Council for the judgment of Boniface, the Pope declared in consistory that he reserved the decision to himself. In the mean time Philip's ambassadors endeavoured for this purpose to win over each cardinal separately, and with seven they appear to have succeeded.[2] Besides this, a memorial to the king, drawn up by Dubois, a lawyer, was published in France, to demand protection (or rather vengeance—which surely had been more than sufficiently executed) against the attacks made by the *deceased* Pope on the liberty and sovereignty of the kingdom, and to cause him to be condemned as a heretic.[3] Thus they always acted on the supposition that Boniface had raised *new* and *quite unheard-of* claims, had been the *first* to endeavour to extend the power of binding and loosing to temporal matters, and had desired to make himself the absolute master of France. The *direct* power of the Church in civil affairs was now combated in detail. It was said that according to the Divine Will, kingdoms and priesthoods must be, and always have been, separate; that Christ Himself did not

exercise any civil power, did not demand obedience from Pilate and Herod, but, on the contrary, commanded that unto Cæsar should be given the things which were Cæsar's; that in like manner neither Peter, nor Paul, nor Clement, nor any of their successors, had claimed a power over civil matters, with the exception of that bestowed by Constantine the Great;[4] that Boniface VIII. was the first to go so far.

[1] Dupuy, p. 207: 'Quanta nos, fili carissime, ad tui directionem sollicitudo impulerit pastoralis officii, quantave paternae pietatis dilectio ad salutem tuam super te viscera mansuetudinis nostrae commoverit, absolutio, quam tibi nuper absenti et non petenti ab omnibus excommunicationum sententiis, quibus ex quacumque causa forsitan tenebaris adstrictus, in tuorum nunciorum praesentia te in benedictionibus dulcedinis praevenientes impendimus, manifestat. Id ne sanguis tuus de nostris requiratur manibus, fecisse laetamur; id egisse non poenitet, et quod plus est, illud etiam facere debebamus. Sumus namque illius vicarius, qui dixit hominem illum, qui fecit coenam magnam, servo suo dixisse: Exi in vias et sepes et compelle intrare, ut impleatur domus mea (Luc. xiv. 23). In hoc parabolam illam implevimus, secundum quam habens centum oves, relictis 99 in deserto, vadit ad illam, *quam deviasse putabat*, donec inveniat eam, et inventam imponit in humeros suos gaudens (Luc. xv. 4, 5). Numquid igitur te, etiamsi nolles, non cogemus intrare? Numquid tantam ovem, quanta tu es, sic nobilem, praecipuam et praeclaram relinquemus, quin impositam nostris humeris reducamus?'

[2] Dupuy, pp. 219 seq. 231 seq.

[3] Dupuy, p. 214 seq. Hefele, p. 351.

[4] 'From the point of view of the Donatio Constantini, which is here accepted as genuine, it would have been difficult to refute the alleged claims of the Pope' (Hefele, l.c. note 2).

§ 12.

Pope Benedict XI. published two decrees at Viterbo, on the 18th and 19th April 1304, in which he cancelled the suspension from the right of teaching and of conferring academical decrees, as well as the reservation of all French benefices, which had been enacted by his predecessor in the previous August.[1] Then on May 12th he moderated the constitution 'Clericis laicos' at Perugia, so that only the demand, and not the payment, of taxes by the clergy to the laity was condemned, and the payment of contributions for State objects, in times of necessity, should be allowed in moderation after previous consultation with the Pope, in accordance with the fourth Lateran Council.[2]

Some days later he absolved all the French priests and laymen who had been excommunicated by Boniface, or by any previous Pope, on account of having put difficulties in the way of communication with the Holy See, and likewise all those who had taken part, either by word or deed, in the imprisonment of his predecessor or of his legates, Nogaret alone being excepted, his absolution being specially reserved.[3] Further, he pardoned the disobedience of all the prelates, abbots, and doctors who had not obeyed the summons to the Roman Synod of 1302;[4] then he cancelled the enactments of his predecessor by which the privileges bestowed on France were recalled or granted to others to the prejudice of the former, or by which any one had been exempted from his obligations towards the king; everything was to return to the same order as before the dispute, with the exception of anything which Boniface VIII. had ordained against Nogaret.[5] Benedict not only secured the old favours to the king, but even added new ones, such as the grant of a half-yearly tithe from ecclesiastical possessions, and the exemption of the court chaplains from the jurisdiction of the Bishop of Paris and the Metropolitan of Sens; he also promised to help the plans of Charles of Valois on Constantinople, which he claimed as the husband of Katharine Courtenay, heiress of the Latin emperor of that place.[6] It appears as if the Pope by these measures hoped to dispose King Philip to accept patiently the energetic blow which he was preparing to deal against the leaders of the attempt at Anagni. At Perugia, where Benedict thought himself sufficiently safe, he ordered the Bull 'Flagitiosum scelus' to be published. After narrating the acts of violence committed by Nogaret, Sciarra, Reginald da Supino, and their accomplices, of which he himself had been a witness, Benedict continued: 'Who is so hard-hearted as not to be able to shed tears over this? Where the opponent who would feel no pity? Where the judge, however weak he might be, who would not rise up to condemn that by which security has been violated, the inviolable assailed, the Papal dignity dishonoured, the Church and her Bridegroom degraded? O crime never to be atoned for! O unheard-of violence! O unhappy town of Anagni, which

suffered it patiently without averting it!' After this complaint the Pope declared all participators, abettors, and assistants in this attempt to be excommunicated, and summoned them to appear before the Apostolic See before June 29th, to receive judgment.[7] If they did not appear they would incur severe anathemas.[8] In the mean time, Benedict XI. died at Viterbo, and so suddenly as to cause a belief that he was poisoned.[9] Some accused the Colonnas of being the perpetrators of this crime, others accused the Gaetanis, others the Florentines, again others a party amongst the cardinals, and others Nogaret's accomplices Ferreta of Vicenza,[10] Philip the Fair himself, the Franciscan monk Bernard Delitiosi and some of the clergy, as to whom John XXII. afterwards (1319) caused investigations to be made. The prelates deputed by the Pope did not find quite sufficient proof of the murder, but condemned the Franciscan monk to perpetual and severe imprisonment; and John, in spite of the objection raised by the royal procurator that the sentence was too light, confirmed the judgment.[11]

[1] Dupuy, l.c. p. 209. Const. Ut eo magis, p. 229.

[2] C. un. Quod olim, de Immunit. Eccl. iii. 13, in Xvagg. Com. Cf. Raynald. a. 1304, n. 12; Bzov. h.a. n. 4; Phillips, K.R. iii. § 131, p. 261 seq.

[3] Dupuy, p. 208. Const. Sanctae matris Ecclesiae.

[4] Dupuy, p. 229. Const. Dudum Bonifacius.

[5] Ib. p. 230, Ad statum tuum. In the constitution Sanctae matris, Benedict gives as reasons for his leniency: '(1) utilitates et commoda, quae ex eodem regno (Franciae), dum in ipsius Ecclesiae devotione persistit, Ecclesiae praedictae proveniunt; (2) quod propter evitandum scandalum, praesertim ubi multitudo delinquit, severitati est aliquid detrahendum.'

[6] Hefele, p. 353.

[7] Dupuy, p. 232. Raynald. a. 1304, n. 13-15. Tosti, vol. ii. doc. S. p. 313. Christophe, p. 141.

[8] Spondan. a. 1303, n. 21. Bzov. a. 1304.

[9] Drumann, ii. p. 164.

[10] Ferret. Vicent. (Murat. R. It. Scr. ix. 1018).

[11] Natalis Alexander (l.c. art. 6, n. 2, 3, pp. 345-347) gives, from the Inquisition archives of Carcassone, the Papal decree concerning the preliminary arrangements of the inquiry and then the result in short. Cf. Baluz. Vita Pap. Aven. t. ii. p. 341.

§ 13.

The Frenchman Bertrand de Got, Archbishop of Bordeaux, was chosen Pope, under the name of Clement V., by the conclave

at Perugia, after a long contest between the French and Italian parties; he was crowned at Lyons on November 14, 1305, and took his seat in France, so that the Papal See then fell into an irksome dependence on the Parisian court.[1] As soon as the coronation festivities were concluded, King Philip wished that the new Pope might listen to the proofs of the heresy of Boniface, and then condemn his memory. Clement V. endeavoured to gain time,[2] and in the mean while to content the king in some other way. He not only renewed the absolution pronounced by Benedict XI., not only chose nine of the new cardinals from among Frenchmen, and restored all their rights to the two Colonna cardinals, not only granted an ecclesiastical tithe to the king for five years,[3] but he even went much further than Benedict in recalling and modifying the decrees of Boniface VIII., and appeared to make all the interests of the French sovereign his own. He entirely cancelled the Bull 'Clericis laicos' by a new decree,[4] retaining, however, the old decrees, specially those of the Lateran Council; on February 1, 1306,[5] he declared with regard to the dogmatic Bull 'Unam sanctam,' that it should in no way prejudice Philip or his kingdom, nor alter his relations with the Holy See concerning the obedience which he owed to it. By this, Philip's grievance only was removed, or rather the decretal was cleared of the false meaning which had been imputed to it by the French.[6] Besides this, Clement granted a Church tithe for two years to Charles of Valois, to help to carry out his plan on Constantinople, by which it was hoped that the Holy Land might the more easily be conquered, and asked for contributions from the Italian States for this expedition so ardently desired by him.[7]

[1] Hefele, pp. 357-369.
[2] Dupuy, pp. 298, 368.
[3] Raynald. a. 1305, n. 14. Christophe, p. 155. Hefele, p. 370.
[4] C. un. Quoniam ex constitutione, iii. 17, de Immunit. Eccl. in Clem. Dupuy, Preuves, p. 287.
[5] C. 2, Meruit, v. 7, de Privil. in Extravagg. Com. Dupuy, p. 288.
[6] Bianchi, t. i. l. i. § 10, pp. 97, 98, against Bossuet, l.c. c. xxiv. p. 327. Phillips, iii. p. 266.
[7] Raynald. a. 1306, n. 2-5. Hefele, p. 370.

§ 14.

Clement V. remained a whole year from February 1306 at Bordeaux, where he was ill for a long time.[1] In May 1307 he met King Philip at Poitiers, when the latter repeated his proposal for the trial of the memory of Boniface VIII. At last the Pope obtained a promise that he would leave it to him to see what should be done against Boniface;[2] notwithstanding this, Philip still urgently and frequently renewed his request. The strongest measures of intimidation were employed by means of the suppression of the order of the Templars.[3] Clement was ready to make the greatest sacrifices, because of his helpless condition[4] and the violence of the king. The Pope was obliged to begin with the least possible delay legal investigations, and to listen to the accusers of the deceased Boniface. In the edict of citation of September 13, 1309, the Pope declared his personal conviction of the innocence of Boniface, but nevertheless promised to listen to his accusers.[5] The trial began with a public consistory held at Avignon, 16th March 1310. The accusers made very extreme charges. They asserted the invalidity of the resignation of Celestine V., from which followed the illegitimacy of Boniface; and they accused him of heresy, simony, and immorality, and maintained the complete innocence of Nogaret and his comrades. There was no want of witnesses against Boniface; everything had been prepared for seven years. If the extant drafts of the proceedings were not arbitrarily falsicated, not a few of the witnesses, both lay and clerical, appear to have been very abandoned men.

The defenders of Boniface desired above all things that Nogaret and his companions should be excluded from the proceedings, as they were personal enemies of the accused, and at the present time under the ban of excommunication. So far Clement agreed with them when he declared on May 13, 1310, that he was of opinion that it was erroneous that an excommunicated person was absolved by the mere fact that the Pope held conversation with him.[6] They protested against the arrangements made with regard to the examination of witnesses; likewise

against the right to judge a Pope, which belonged only to a General Council, and when it was question of heresy. As their main effort was to contest the right of their opponents to bring an accusation at all, they cared less to refute the actual charges, and only discussed some of them; for example, the false statement that Boniface had refused the sacraments on his death-bed.[7]

[1] Christophe, p. 160.

[2] Hefele, pp. 372, 373.

[3] Boutaric, Notices et Extraits, xx. 2, pp. 165 seq. 175 seq. La France sous Philippe le Bel, p. 133 seq. Hefele, p. 381.

[4] Cf. Christophe, p. 170. In the May of 1308, Philip repeated the proposals he had made in the previous May for the commencing a process against Boniface; he consented first in 1311, that at the General Council, which on August 12, 1308, was called for October 1, 1310, at Vienne (Mansi, xxv. p. 369 seq.; Raynald. a. 1308, n. 4), both the great matters should be negotiated: 'De quibus Templariorum et Bonifacii negotiis poterit vestra sanctitas, interim examinata plenius veritate, in Concilio feliciter ordinare.' Ep. Philippi ap. Dupuy, Preuves, p. 299. That which is related of the advice of the Cardinal of Prato (Christophe, i. p. 171 seq. according to Villani, viii. 91) is only put in the wrong place, but really quite conceivable.

[5] Raynald. a. 1309, n. 4. Dupuy, p. 368 seq.; Redemtor noster.

[6] Hefele, p. 397.

[7] Dupuy, p. 512 seq. Only a part of the protest.

§ 15.

In December 1310, the Pope adjourned the proceedings till Mid-Lent Sunday of the following year.[1] In February 1311, Philip at last committed the whole affair to the Pope, with the condition that reparation must be made to himself. The king was pronounced free of all guilt in the unhappy occurrences at Anagni, and all decrees disadvantageous to the king and his kingdom were cancelled. At the Council of Vienne, which was opened on the 16th October 1311, the affairs of the Templars appeared to be the most important matter; still the case of Boniface was brought to a conclusion.[2] The much-abused Pope was defended by three cardinals and several learned men in France and he was also acknowledged to be a rightful Pope.

[1] Hefele, p. 402.

[2] Giov. Villani, l. ix. c. xxii. Pipini, Chron. l. iv. c. xli. xlix. MS. Vat. ap. Raynald. a. 1311, n. 54. Mansi, Conc. xxv. 403. Hefele, p. 472 seq.

§ 16.

The German chroniclers speak on the whole very favourably of Boniface. The monk of Furstenfeld considered him to be a Pope hated by many on account of his sense of strict justice, who, had he lived longer, would have remedied many imperfections in the Church.[1] Nicholas of Siegen is astonished at his courage, which was without equal.[2] And indeed, says Schwab,[3] after quoting this testimony, there is no mistaking a certain loftiness of mind in the bold words which he said to the cardinals in his distress: 'And if all the princes of the world were united against us, and against this (Roman) Church, we would regard them as straws, if we had truth on our side and were responsible for it. But if we had not truth and justice on our side, then indeed we should have reason to be afraid.'[4] It can reasonably be said of him, 'What he desired to effect was explained by the principles on which the Popes had acted for a long time. The failure of his plans did not lie with him, but in the important changes of the time. When the Papacy was obliged to descend again from the heights to which it had attained in the twelfth and thirteenth centuries, it could not have been done with more dignity than by Boniface VIII., and in the manner in which he conducted himself during his pontificate.'[5] The sacrilegious outrage against him did not remain unpunished.[6]

[1] Böhmer, Fontes rer. Germ. i. p. 24.

[2] Chronicon Eccles. ed. Wegele, Jena, 1855, p. 372.

[3] Schwab, Gerson, pp. 4, 5.

[4] Alleg. D. Papae pro confirmando rege Rom. Alberto ap. Marca, de Conc. l. ii. c. iii. p. 111, ed. Baluz.

[5] Möhler's Church History, edited by Gams, ii. pp. 472, 473.

[6] Bianchi, t. iii. l.c. § 7, n. 15, p. 546 seq. When Philip IV. died in 1314, many priests had to be forced to say Masses for his soul. Raynald. a. 1314, n. 26. In 1316 his son, Louis X., was poisoned, and in 1328 the throne passed to the line of Valois.

§ 17.

The question concerning the indirect power of the Church over temporal matters in a Christian State was not yet decided; it was further discussed in its various aspects. But in the person of Philip IV. the State was already in opposition to the

Church, having separated itself from her and raised itself above her,[1] and France, which once was the glory and faithful support of the See of Rome,[2] now reduced it to a state of servitude, and the fundamental principles of the mediæval Christian State were put an end to. Regal pride and national egotism joined hands in the work, and the world was taught by experience that regal pride was not appointed as the protector of the Church, and that national egotism was in principle irreconcilable with the idea of a universal religion. The origin of many of the claims of the civil power must therefore be looked for in that unhappy time, and by degrees from that time they have received an historical form, and have been received as a part of positive law. The Church indeed at that time was still deeply rooted in the faith of nations; till then she had been the leader of general politics, and her institutions had a part in all the circumstances of life; but everything was preparing for the great breach which was to separate the life of the State from the life of the Church,[3] in order that the civil should be raised over the spiritual power.

In his struggle with the Church, Philip IV. was greatly assisted by the widely-spread discontent against spiritual jurisdiction, which was very extensive. Incessant bickerings took place between the royal and episcopal courts, and the strain became so great that King Philip VI., the first Valois, ordered several conferences to be held in his presence at Paris and Vincennes (the end of 1329 and the beginning of 1330).[4] The royal councillor, Peter de Cugnières, made a speech, alleging a passage[5] from St. Matthew xxii. 21, in which he endeavoured to prove with the help of sixty-six arguments that no civil jurisdiction belonged to ecclesiastics, but that they had taken almost entire possession of it.[6] Then the Archbishop of Sens, who, it should be said, did not recognise the assembly as a competent authority, in the name of the prelates made a speech founded on 1 Peter ii. 17. Later on, Peter Bertrandi, Bishop of Autun, endeavoured to refute the arguments of Peter de Cugnières in detail, and defended the indirect power of the Church in civil affairs. The prelates defended the principle of the jurisdiction which appertained to them, but allowed that in practice some abuses had crept in

amongst the Church officers, which they promised to put down. The king demanded a written deposition of the statement of the case by the bishops; they presented him with a short explanation in French, in which they begged him to leave the Church in possession of her rights. He expressed his strong desire to protect the rights of the Church, and then, when Peter de Cugnières had drawn up a fresh memorial, for the limitation of ecclesiastical jurisdiction,[7] and had been forcibly answered by the Bishop of Autun, who begged for a clear declaration on the part of the king, Philip repeated that he did not intend to diminish any ecclesiastical right, he would rather increase the liberties of the prelates. The edicts of the royal officers, which the bishops pointed out as offensive, were declared by the king to be invalid and published without his orders; on the other hand, he made the fulfilment of the promise to remove the acknowledged abuses a condition for granting his future protection to spiritual jurisdiction and his forbearance from further interference. Philip VI., who was praised by Pope John XXII. on account of his bearing towards the Church,[8] showed that he was not moved by the same spirit which animated Philip IV., and which did not revive till later at the French court.

[1] Phillips, K.R. iii. § 131, p. 267.

[2] Cf. Greg. IX. et al. ap. Raynald. a. 1229, n. 53, 56; 1227, n. 60; Innoc. III. l. xii. Ep. 27 (Migne, t. ccxvi. p. 36).

[3] Phillips, l.c. p. 268.

[4] Phillips, l.c. p. 269 seq. Hefele, vi. p. 549 seq. The Libellus D. Bertrandi adv. Mag. Petrum de Cugnières, in Max. Bibl. PP. Lugd. t. xxvi. p. 109 seq.; also in the Traités des Droits et des Libertés de l'Eglise Gallicane, 1731, t. i. Raynald. a. 1329, n. 75 seq. Mansi, xxv. 883 seq.

[5] Each of the speakers, whether bishop or layman, took a verse from the Bible as a text.

[6] Hence the expression 'reintegrare temporalia.'

[7] Not for the introduction of the 'appel comme d'abus,' which was first instituted in the fifteenth century. Phillips, p. 271.

[8] Joh. XXII. Ep. iii. Non Jun.: 'Literas regias fervorem magnae devotionis et fidei, quibus erga Deum et Ecclesiam praefulgere regalis serenitas noscitur, recensentes delectabiliter et responsum perversis detractoribus laedere sinceritatem regiam circa praemissa molientibus factum, sicut Catholicum et orthodoxum decebat principem, describentes, recepimus laeta manu.' Cf. Natal. Alex. H. E. saec. 13 et 14, cap. x. a. 7, t. xv. p. 556 seq.

ESSAY XII.

GIFTS OF LAND MADE BY THE POPES AND THE DONATION OF CONSTANTINE.

We have already seen, in the case of Gregory VII., how unjustly has been attributed to him the opinion that the Pope can at pleasure bestow on others lands which are not his own. Let us now examine the remaining cases brought forward in proof of this supposed Papal doctrine.

The forged donation of the Emperor Constantine is especially pointed out as the basis of the extensive spiritual and temporal jurisdiction of the Pope, and was, according to *Janus* (p. 142 seq.), a Roman fabrication, in order to move the King of the Franks to act in favour of Rome, and bestow upon her fresh gifts.

Part I. Gifts of Land made by the Popes.

§ 1, 2. Writers on Papal rights over individual and especially heathen lands. § 3. Bull of Alexander VI. 'Inter cetera.' § 4. Slavery. § 5. In what sense the Bull implies a gift. § 6. In any case it is no definition of faith. § 7. Pope Nicholas V. on the possessions of Mahometans. § 8. Clement VI. on the Canary Islands. § 9. Alexander III. on the Saracens. § 10. Ireland given to the English king by Hadrian IV. § 11. Whether in fief. § 12. Possibility of obreptions and subreptions, which are not inconsistent with the doctrine of Infallibility. § 13. Falsifications of Papal deeds severely punished. § 14. The Papal power not based on falsifications.

§ 1.

It cannot be denied that certain writers (defenders of the direct power of the Church in matters temporal) have claimed for the Pope full sovereignty over all kingdoms of the world, in a sense never put forward by the Apostolic See itself. Others again were of opinion that the Pope might dispose at will of heathen

lands. Some have held the same opinion as to the power of the emperor; and under this idea Albrecht of Apeldern, 1198-1229, obtained for Livonia certain rights from Philip and Otto IV.[1] Even though there may have been no foundation for this opinion,[2] it is never made a subject of reproach to those who, acting upon it, asked and obtained for themselves heathen lands from the emperor. But in the Middle Ages the authorisation of the Pope was sought far more eagerly than that of the emperor; and meeting with readier acknowledgment from the whole of Christendom, it offered far better means of defence against internal and external foes. It remains to be seen whether and to what degree this opinion may have been in truth founded not merely upon isolated general expressions, but upon certain determinate acts of the Popes.

[1] Döllinger, Lehrbuch der Kirchengeschichte, ii. p. 110.

[2] Many authors agree in this view that the universal empire exercised by ancient Rome, based upon the subjugation of many nations, was justified by the good end which it served. Dante, de Monarch. l. ii. c. vi.: 'Declaranda .... duo sunt, quorum unum est, quod quicunque bonum reipublicae intendit, finem juris intendit, aliud est, quod Romanus populus subjiciendo sibi orbem bonum publicum intendit.'

§ 2.

Although certain ancient writers, such as the Cardinal Bishop Henry of Ostia (died 1271), Ægidius of Rome, Alvarus Pelagius, and Augustinus Triumphus, deny to unbelievers the right of possession, yet the greater number of theologians dispute this,[1] and teach, with St. Thomas, that unbelievers retain their dominions; that the Church cannot depose and deprive of their territory unbelieving princes who have never been her subjects; those only who, having at one time accepted the Faith, have fallen away from it, may, if needful, be declared by judgment of the Church to have forfeited their dominions.[2] On the other hand, the Church claims an absolute right of preaching the Gospel in every place, thus fulfilling the duty laid on her by Christ in virtue of the power given to Him in heaven and on earth, of going out into all the world, teaching and baptising all nations (St. Matt. xxviii. 18, 19). Moreover, according to Hugo

Grotius,[3] unbelievers have no right to hinder the preaching of the Gospel and persecute preachers. In such case Christian princes may protect missionaries with the sword, forcing unbelievers to suffer them to preach freely, and at least to tolerate converts to Christianity in their land.[4]

On this point the doctrine of the Middle Ages was in agreement with the Fathers of the Church,[5] especially with Gregory the Great, who, though usually so gentle, commended the Exarch Gennadius of Africa for waging a successful war for the spread of Christianity.[6] Since the conversion of heathen nations cost the lives of many missionaries and neophytes, the protection of Christianity was one of the chief duties of Christians in authority; and a war undertaken in defence of the faithful was fully justified, especially if it put an end to severe persecution, and chastised injustice done to fellow-countrymen and co-religionists, even though the war should end in the subjugation of heathen princes.[7] This view found expression not only in the Crusades and in the wars against the heathen Prussians, but in our own days also, when the Christians were massacred in Syria, China, and Cochin-China, and when, in Abyssinia, Englishmen and Germans were imprisoned and ill-used. For causes far more trifling have Indian princes been deprived of their dominions by England; and often not only diplomatic notes, but fleets and armies, have been set in motion by the ill-treatment of a single Jew.

[1] Molina, de Justitia et Jure, t. i. tract. 2, disput. 29, n. 15, p. 60: 'Per adventum Christi in mundum non amiserunt homines sua jura et dominia neque ab illo, quatenus homine illa acceperunt,' &c. Cf. Cajetan, 2, 2, q. 66, a. 8, resp. ad 2; Franc. Victoria, Relect. de Indis. P. i.; Didacus Covarruvias, Relect. super Reg. Peccatum, P. ii. § 10; Barthol. Cassanus, Apologia pro Indis. Domin.; Bannez, in S. Thom. 2, 2, q. 12, art. 10.

[2] S. Thom. 2, 2, q. 12, a. 2: '*Infidelitas secundum se ipsam non repugnat dominio*, eo quod dominium introductum est de jure gentium, quod est *jus humanum*; distinctio autem fidelium et infidelium est *secundum jus divinum per quod non tollitur jus humanum*. Sed aliquis per infidelitatem peccans potest sententialiter jus dominii amittere, sicut etiam quandoque propter alias culpas. Ad Ecclesiam autem non pertinet punire infidelitatem in illis, *qui numquam fidem susceperunt*, secundum illud Apostoli: Quid mihi de his qui foris sunt? (1 Cor. v. 12.) Sed infideli-

tatem illorum, *qui fidem susceperunt*, potest sententialiter punire, et convenientur in hoc puniuntur, quod subditis fidelibus dominari non possint. Hoc enim vergere posset in magnam fidei corruptionem, quia, ut dictum est, *homo apostata pravo corde machinatur malum et jurgia seminat intendens hominem separare a fide.* Et ideo quam cito aliquis per sententiam denunciatur excommunicatus propter apostasiam a fide, *ipso facto* ejus subditi sunt absoluti a dominio ejus et juramento fidelitatis, quo ei tenebantur.'

[3] Hugo Grotius, de Jure Belli et Pacis, l. ii. c. xx. § 49, n. 1.

[4] St. Thomas, l.c. q. 10, a. 8, in corp. Joh. Major, in l. ii. sent. dist. 44, q. 2, 3. Cajetan, in 2, 2, q. 10, a. 8. Alphons. a Castro, de justa Haeret. punitione, l. ii. c. xiv. Dominicus a Soto, in l. iv. dist. 3, q. un. art. 1. Antonius a Corduba, Quaestion. l. i. q. 57, dub. 4. Gregorius de Valentia, t. iii. disput. 1, q. 10, punct. 6, p. 525 seq. Cf. punct. 8, p. 542 seq.; Solorzan. de Jure Ind. l. ii. c. xx.; Toletus, in Sum. l. iv. c. ii. n. 3; Ledesma, t. ii. Sum. tract. 1, c. v.; Sanchez, in Sum. t. ii. l. ii. c. i. n. 4; Suarez, de Fide, disput. 18, sect. 2, n. 8; Beccan. in Sum. t. ii. q. 4, c. xiii. n. 12.

[5] Bianchi, t. ii. l. vi. § 9, p. 569 seq. against the Defensio Declar. Cleri. Gall. P. i. l. i. sect. 1, c. xv. p. 117 seq.

[6] Greg. M. l. i. Ep. 75, al. 73, ad Gennad. Patr.: 'Quatenus Christi nomen per subditas gentes fidei praedicatione circumquaque discurrat.' Cf. ibid. Ep. 74, al. 72.

[7] Covarruvias, P. xii. in Regul. Peccatum, § 10, n. 13, v. Quanto licitum, § 11, v. Fateor plane; Bannez, O.S.D. in Sum. 2, 2, q. 10, a. 10, v. concl. 3; L. Molina, l.c. disp. 105, 106, t. i. p. 181 seq. de Fide, q. 10, a. 8; Azor, and others (Bianchi, l.c. n. 4, p. 574). The Protestant Grotius, l.c. n. 1, 2, teaches the same, and cites on this point the wars of the ancient Roman emperors against the Persians. At the time of the Council of Constance it was disputed whether conversions might be made by force of arms (Hefele, Conc. vii. p. 241).

§ 3.

No Pope has ever taught, nor has any grave theologian ever maintained,[1] that the Pope has authority to bestow the dominions of unbelieving princes upon believers merely at his own discretion, and to give away at will lands not belonging to him. The Bull 'Inter cetera' of Alexander VI. (1493),[2] which is specially cited in proof of this claim, was by no means intended to partition the world, but to direct the course of Spanish ships, to hinder disputes between Christian princes, especially between Spain and Portugal; and, on the other hand, to secure the spread of Christianity. In all matters concerning the acquisition of territory and voyages of discovery made by Christian kingdoms the Pope, as their recognised arbiter, had the right

of decision;[3] and in matters concerning the spread of Christianity in newly-discovered lands he had the same right, as Head of the Church. Just as patents are now given for inventions, and copyrights granted for compositions in literature and art, so in former days a Papal Bull and the protection of the Roman Church were found convenient means for securing fruits acquired with toil and difficulty, all other claimants unjustly desirous of taking them for themselves being held back by the censures of the Church. All this was completely in accordance with the spirit of the Middle Ages, by which Spain and Portugal were at that time still guided.[4]

[1] Bianchi, l.c. p. 582: 'Noi non ammettiamo tal potestà nel Romano Pontefice, sicchè gli sia lecito conceder quello che non è suo, nè dare ai rè Christiani i regni degli infedeli.'

[2] C. i. libri sept. i. 9, de Insulis Novi Orbis. Bullar. M. ed. Luxemb. t. i. p. 454. Raynald. a. 1493, n. 19.

[3] Hugo Grotius acknowledges this in the treatise, de Mari Libero, c. iii., published 1609. He wrote to defend the right of the Dutch to sail to certain islands in the neighbourhood of the East Indies, a right disputed by Spain and Portugal, and in so doing he answered one of the objections raised against the Bull Inter cetera. Cf. Bellarm. de Rom. Pont. l. v. c. 2 v. fin. Franc. Victoria, Relect. de Indis. p. 131, ed. 1565. Bianchi, l.c. § 9, n. 6, p. 581. Mamachi, l.c. pp. 176, 177.

[4] Civiltà Cattolica, 1865, ser. vi. vol. i. p. 662 seq.

§ 4.

The Bull of Alexander VI. is by no means answerable for the tyranny to which the natives of America were subjected by the Spaniards—a tyranny well-nigh outdone indeed by that exercised 'in the interests of civilisation' by the English settlers, even in our own day, upon the North American Indians and Australian natives, now fast dying out.[1] The Church had power to mitigate and lessen slavery, but she could not put an end to it by a single blow.[2] The religious orders, with perfect self-devotion, did all in their power to put down abuses.[3] Councils[4] and Popes[5] had the freedom of the natives greatly at heart. The violence of the conquerors was neither caused nor favoured by the Bull of Alexander VI., which was directed to the conversion,[6] and therefore to the true welfare, of the natives.

[1] Cf. extract from observations of Rev. W. Schmidt, June 1842, Byrne, Emigrant's Guide, p. 70; R. Salvaldo, O.S.B. Memorie Storiche dell' Australia, Roma, 1851.

[2] Margraf, Kirche und Sklaverei seit der Entdeckung Amerika's, Tübingen, 1865, p. 5 seq. Civiltà Cattolica, 1865.

[3] Margraf, l.c. p. 57.

[4] Councils of Mexico, 1545 and 1585; of Lima, 1583 and 1585. Margraf, pp. 107 seq. 116 seq. 120.

[5] Pius V. 7 and 8 Oct. 1567, to the Archbishop and the Viceroy of Mexico (Raynald. h.a.). Clement VIII. for Peru (Solorzano, Polit. Ind. ii. 1, n. 12). Urban VIII. Constit. Commissum, April 22, 1639. Benedict XIV. Constit. Immensae, Dec. 28, 1741. Gregory XVI. Constit. In supremo, Dec. 3, 1839. Cf. Lämmer, im Archiv. f. Kath. Kirchenrecht, 1864, vol. xii. p. 177 seq.

[6] The first sentence of the Bull shows this, in which it is set down as specially pleasing to God, and most desired by the Pope: 'Ut fides Catholica et Christiana religio nostris praesertim temporibus exaltetur, ubilibet amplietur et dilatetur,' &c.

§ 5.

The express mention in the Bull of the word 'gift' (donamus) has given special offence. The Pope then, it is said, gave what did not belong to him, and thus set at naught the independence and freedom of the American Indians.[1] Even presuming it to have been a mere donation, it would be easy to reply that the transaction was far better than the treaties of modern States. 'It is asked,' writes Ferdinand Walter,[2] 'what right the Pope had to dispose of foreign countries; but, judged by private law, it is equally unsatisfactory whether this is done by the Pope, or, according to the new international law, by a European treaty. The Pope gave that right, as is proved by the Bull in question, that the natives might by mildness and gentleness be converted to Christ. But in modern treaties of this sort little is said in the interests of the conquered people; there can be no doubt therefore on which side lies the gain for humanity.' To this it might be added, that a Papal constitution in that day had as much force as a European treaty in our own, and even more. It may be observed further: (1) That in treaties and public documents doubtful expressions are to be understood according to reason, justice, and honour. It would have been unreasonable and foolish for the Pope to give away that which was not his own; it would have been unjust and dishonourable

to deprive whole nations of their freedom, even though they were unbelievers; moreover, it would have been contrary to the teaching of mediæval theology. Since, then, the Pope was entitled neither by his temporal nor by his spiritual power to make any such unlimited donation, the word *donamus* must be understood in the limited sense of the law then recognised; it is to be applied only to coast-stations and settlements acquired by just title, and to other territory in the islands then in question; and in this sense it was understood by those living at the time—Cajetan, Dominicus Soto, and also by later and even by Spanish theologians.[3] (2) In the year 1497, King Emanuel of Portugal sought from the same Pope Alexander VI. a like grant of West Africa. The Pope made use of the same formula, *donamus*, but with the condition of the voluntary subjection of the inhabitants;[4] which condition, since it was implied in the law itself, was to be understood equally with other legal principles, even though not expressed; and thus a donation was indeed expressed as against all other European princes,[5] but not as against the natives of the New World. Monarchs receiving this grant had a right of priority in the territory of which they were the discoverers. (3) The Pope does indeed say that the land in question is bestowed as a free gift, and from the fulness of his apostolic power; but the choice of Alexander as arbiter was founded in the first place on the authority possessed by him as Pope, and on the reverence felt by Catholic sovereigns for his dignity as Head of the Church; and hence he was authorised to give his decision not only with perfect freedom and full knowledge of the case, but, moreover, in virtue of the apostolic power, which had moved even kings to commit to him the decision in a matter so weighty. So little did he arrogate to himself absolute sovereignty over these lands, that he expressly declared in his Bull his desire to be in no way prejudicial to Christian princes who, before the Christmas of the preceding year, 1492, had taken possession of those islands and territories.[6] He thus made it understood that the one single aim of his decree was the prevention of strife between the Kings of Spain and Portugal, who had of their free will chosen him as arbiter; and that

he in no way made himself judge between them and other sovereigns, by whom his intervention had neither been asked nor accepted. Moreover, the circumstance that Alexander VI. addressed his decree not to the whole Church, nor even to all princes, but to Ferdinand and Isabella alone, proves he had no desire to dispose of the lands in question as absolute lord, but as an arbiter, who confirmed his sentence with his authority as Vicar of Christ, and with the usual forms; and in this he acted precisely according to the intentions of the Spanish sovereigns.[7] (4) When Paul III.,[8] in two Briefs, took under his protection the freedom of the American natives, he had not the least thought of derogating from the Bull of Alexander VI., which he understood precisely in the sense given above. Moreover, the Spanish laws go upon the supposition of the freedom of the Indians.[9] It is to be remembered, that the proclamations made by the Conquistadores to the natives of the discovered and conquered lands, telling them of the universal supremacy of the Pope, and the duty of submission to the kings sent out by him, did not proceed from the Pope, but were fabricated by officials and adventurers.

[1] Robertson's History of America, vol. ii. Büschung, Erdbeschreibung, vol. xxxi. Marmontel, Les Incas, Préf. p. xxviii. seq.; and others.

[2] Lehrbuch des Kirchenrechts, § 342, p. 607, note 8, 11th ed.

[3] Suarez, disput. 18, de Fide, sect. 1, n. 7. Lugo, disp. 13, de Fide, n. 102. Salmanticenses, tract. 21, de Decalogo, P. ii. n. 9. Conink, disput. 18, de Fide, n. 160. Morelli, in Ord. Apost.: 'Quia concessio, quantumvis ampla et absoluta sit verbo, restricta debet intelligi *ad terminos juris et aequi*.' The general rules for privileges apply here, on which vide Schmalzgrueber, in l. v. Decret. tit. 23, § 4, specially n. 128, 129.

[4] Raynald. a. 1497, n. 33: 'De civitatibus, castris, locis .... infidelium, quae tibi ditionique tuae subjici et quae te in dominum cognoscere seu tributum solvere *velle* contigerit .... districtius inhibentes *quibuscunque regibus*, quibus jus quaesitum non foret, ne se contra (illos) se tibi subjicere *volentes* quovis modo opponere audeant.'

[5] But rights already gained by them were respected; the Bull applied only to 'terras quae sub actuali dominio temporali aliquorum dominorum Christianorum non essent.'

[6] Decernentes nihilominus, per hujusmodi donationem, concessionem et assignationem nostram nulli Christiano principi, qui actualiter praefatas insulas et terras firmas possederit, usque ad dictum diem Nativitatis D.N.J.C., jus quaesitum sublatum intelligi posse aut auferri debere.

[7] Gosselin, ii. p. 272 seq.

[8] Pastorale officium, May 28; Veritas ipsa, June 2, 1537.
[9] Recopilacion de leyes de los regnos de las Indias, l. iii. tit. de la Guerra, l. iv. tit. 7; l. i. tit. 4, l. viii. (the two last laws of Charles V.).

§ 6.

But even presuming it to have been the opinion of Alexander VI. that the Pope may dispose of heathen lands for the sake of their conversion, or even that unbelievers are wholly incapable of lawfully possessing dominions, still this his own personal opinion, expressed in granting a privilege to one dynasty, would be in no way binding, and should any one consider this an error on the part of the Pope,[1] he would be guilty of no offence against the dogma of Papal Infallibility.[2] A merely temporal donation cannot be considered as a definition of doctrine, and a practical enactment by the Pope differs widely from a binding expression of his supreme teaching office in matters of revelation.[3]

[1] Gregory of Valentia is not far from this when he says, l.c. punct. 7, p. 540, ad 2: 'Alexander VI. (si in eo facto particulari, ad reges illos tantum et ad illas insulas pertinente non erravit) solum concessit illis regibus jus quoddam superintendentiae et patrocinii in infideles illos, postquam debito modo essent ad fidem conversi. Nec enim potuit infideles illos dominio suo privare propterea solum, quod essent infideles.'
[2] Card. du Perron. Repl. l. i. c. xci. p. 545.
[3] Fessler, p. 50.

§ 7.

Pope Nicholas V. is reproached[1] with having in 1454 empowered King Alphonsus V. of Portugal to enslave foreign nations merely because they were not Catholic, and to take for himself the possessions of all the Mahometans and heathens of West Africa,[2] which grant was confirmed by Calixtus III. in 1456 and Sixtus IV. in 1481.[3] In this case also it was presupposed that the limits of the principles of justice then universally acknowledged were to be observed. The intention was to ward off the attacks of the enemies of Christendom (Portugal had been many times forced to go to war), to protect converted negroes, to retain lands lawfully won, and to afford means for the free preaching of the Gospel. The Pope thus

confirmed the prohibition of Alphonsus V., by which no one might sail to those islands and coasts except with Portuguese ships and sailors, after payment of a fixed tribute and permission received from the king; and this was done that an undertaking begun with just reason and so favourable to civilisation might not be injured, and that disputes and wars might be prevented. The legally-established titles by which slavery was justified could neither be changed nor abolished by the Popes; they were forced to be content with condemning the deeds of violence by which, contrary to justice, negroes and other barbarians were deprived of their freedom; they could not forbid conquests made in wars against Mahometan and other infidel princes, and could only strive to make them serve the interests of civilisation and of Christianity.

[1] Defensio Decl. Cleri. Gall. l. i. sect. 1, c. xiv. p. 116. Schulte, i. p. 36 seq.

[2] Const. Romanus Pontifex, Jan. 9, 1454 (Bull. Rom. iii. iii. p. 70); Const. Nuper. (Raynald. a. 1454, n. 8 seq.).

[3] Calixt. III. Const. Inter cetera, 1456; Sixt. IV. Const. Aeterni Regis, 1481. Cf. Cyr. Morelli, Fasti Novi Orbis, p. 58.

§ 8.

In the year 1344, Luis de la Cerda had caused the sovereignty of the newly-discovered Canary and other islands to be delivered over to him by Pope Clement VI.,[1] who gave them on condition that no other Christian princes had won for themselves a special right over these islands.[2] The King of Portugal and Alphonsus of Castile did make good such a claim, but relinquished it out of love of the Apostolic See.[3] This case may possibly have been influenced by the fact that there had before been question of various islands bestowed upon the Roman Church by Constantine the Great, and also of the necessity of a Papal authorisation for the spread of Christianity, and for any addition to the number of Christian princes; moreover, the kings of the Pyrennean peninsula had long before obtained from the Papal See an authorisation for the conquest of lands occupied by unbelievers.

[1] Raynald. a. 1344, n. 39 seq. Döllinger, Lehrbuch, ii. p. 271.

[2] Raynald. l.c. n. 39: 'Omnes praedictas insulas et earum quamlibet, *dummodo in eis non sit alicui Christiano specialiter jus quaesitum*, in omnibus juribus ac pertinentiis suis .... in feudum perpetuum .... concedimus et donamus teque praedicto feudo per sceptrum aureum praesentialiter investimus.'

[3] Ib. n. 47 seq. 50.

§ 9.

Alexander III. in 1179 confirmed to Alphonsus of Portugal, together with kingly rights, all those places he might take from the hands of the Saracens, provided no claim could be laid to them by the neighbouring Christian princes.[1] Applications of the same kind had been already made to the Roman See under Gregory VII., and had been granted by him.[2] Great security was thus gained for the newly-won territory, and at the same time all question as to the lawfulness of the occupation was set at rest, as it might have been thought that the Moors, who had ruled the southern half of the Peninsula since 712, could not merely by the natural law be expelled. Public law had long recognised the widest distinction between Jews and Saracens. Jews showed themselves willing to serve and to obey; Saracens persecuted Christians in all ways and drove them out of their own territories;[3] to live at peace with them was then impossible, and it was especially necessary and allowable to pursue the Moorish pirates to the utmost.[4] The Mahometans occupied territory belonging to Christians which had never been legally surrendered to them; they misused and injured in every way those professing Christianity, and not only blasphemed their faith, but went all lengths in fighting against it.

[1] 'Omnia loca, quae de Saracenorum manibus eripuerit, in quibus jura sibi non possint Christiani principes circumpositi vindicare.' Sousa, Provas da Historia Genealogica da Casa real Portugueza, Lisboa, 1739, i. 7. Brandão, Monarchia Lusitana, Lisboa, 1690, iii. 295. Jaffé, Reg. n. 8725, p. 786.

[2] See Essay viii. (on Gregory VII.) part ii. § 5.

[3] Can. 2, Dispar. c. xxiii. q. 8 (Alex. II.); also Ivo, P. x. c. lxx.; Pann. viii. 20.

[4] Cf. can. 12, Praeterea, c. et q. cit. (Joh. VIII.).

§ 10.

Special stress is laid on the claim of Pope Hadrian IV. to all islands converted to Christianity as possessions of the Roman Church; and in particular on his gift of Ireland to the King of England on condition of a yearly tribute.[1] King Henry II. had expressed to the Pope his desire to extend the kingdom of Christ and to civilise barbarous nations,[2] and had made known to him especially his resolution to bring the inhabitants of Ireland within the pale of the law. In many parts of this country Christianity was well-nigh exterminated, and murder, debauchery, and complete lawlessness reigned.[3] According to the English chronicles, the bishops of Ireland assented to this plan of Henry's.[4] Hadrian IV. merely gave his consent that Henry should land in the island, that the people should receive him with respect and acknowledge him as their lord.[5] The island, once subjected to the kingdom of Christ, was to be guarded by the Church; it was the property of St. Peter, as the king himself acknowledged to the Pope;[6] but no mention was made of a temporal right or of a real donation. The yearly tribute offered by Henry and accepted by the Pope is no proof of temporal possession; England herself paid such a tribute without having up to that time acknowledged the Pope as her temporal sovereign.

[1] Bossuet, Defensio Decl. Cleri. Gall. t. i. l. i. sect. 1, c. xiv. p. 116; l. iii. c. xviii. fin. p. 313. Schulte, i. p. 38, n. 5.

[2] This appears from the letters of the Pope to the king. Hadrian, Ep. ad Henric. II. (Mansi, xxi. 788; Jaffé, n. 6908): 'Ad dilatandum Ecclesiae terminos ac declarandum indoctis et rudibus populis Christianae fidei veritatem et vitiorum plantaria de agro Dominico exstirpanda sicut Catholicus princeps intendis et ad id convenientius exsequendum consilium Apostolicae Sedis exigis et favorem.'

[3] The island was still in a most lawless condition under Alexander III., successor to Hadrian IV.; vide Alex. III. Ep. 1002 (Migne, t. cc. p. 883): 'Quae (sens Hibernica) divino timore post posito tamquam effrenis passim per abrupta deviat vitiorum et Christianae fidei religionem abjicit et virtutis, et se interimit mutua caede. . . . Novercas suas publice introducunt et ex eis non erubescunt filios procreare; frater uxore fratris, eo vivente, abutitur; unus duabus se sororibus concubinis immiscet et plerique illorum, matre relicta, filias introducunt,' &c.

[4] Thomassin, P. iii. l. i. c. xxxii. n. 4, 5, fin.: 'Archiepiscoporum et episcoporum Hiberniae consensum auctor est Rogerius Pontifici ostensum

fuisse.' Alexander III. subsequently took for granted the voluntary subjection and allegiance of the Irish princes to Henry, which secured peace and order in the island. Alex. III. Ep. 1003, p. 884 seq.: 'Ubi communi fama et certa relatione primum nobis innotuit, quod vos .... regem Angliae illustrem in vestrum regem et dominum suscepistis et ei fidelitatem jurastis, tanto ampliorem in corde laetitiam concepimus, quanto per ejusdem regis potentiam in terra vestra cooperante Domino major pax erit atque tranquillitas et gens Hibernica, quae per enormitatem et spurcitiam vitiorum adeo videbatur longius recessisse, divino cultu propensius informabitur et melior Christianae fidei suscipiet disciplinam.... Unde super eo, quod tam potenti et magnifico regi .... vos *voluntate libera* subdidistis, providentiam vestram digna laudis commendatione prosequimur, cum exinde vobis, Ecclesiae et toti populo illius terrae utilitas speretur non modica proventura.'

[1] Hadr. IV. l.c.: 'Nos itaque pium et laudabile desiderium tuum cum favore congruo prosequentes et petitioni tuae benignum impendentes assensum, gratum et acceptum habemus, ut pro dilatandis Ecclesiae terminis, pro vitiorum restringendo decursu, pro corrigendis moribus et virtutibus inferendis, pro Christianae religionis augmento insulam illam ingrediaris et quod ad honorem Dei et salutem illius terrae populus honorifice te recipiat et sicut Dominum veneretur, jure nimirum ecclesiastico salvo, illibato et integro permanente et salva B. Petro et SS. Rom. Ecclesiae de singulis domibus unius denarii pensione.'

[2] Ibid.: 'Sane Hiberniam et omnes insulas, quibus sol justitiae Christus illuxit, et quae documenta fidei Christianae ceperunt, ad jus B. Petri et SS. Rom. Ecclesiae (quod nobilitas tua recognoscit) non est dubium pertinere.' Many learned writers say that, according to the words of the Pope, Ireland did not belong to St. Peter as a property to a master, but as a flock to a shepherd. Thomassin, l.c. n. 4, speaking of Hadrian's words quoted above, says: 'Quod de filiali subjectione et religiosa obedientia intelligi nil prohibet.... Cum non facile justitiae color et species affingatur iis bellis, quae gentibus quietis .... vixque cognitis inferuntur, suadet ipsa ratio et sapientia, ut ea religionis vertici et parenti omnium fidelium ante approbentur, a quo re perpensa illud pronuncietur, illud reapse curetur, ut ne ambitione serviant ejusmodi expeditiones, sed pietati dilatandae et summi verique Dei cultui ac lumini barbaris nationibus inferendo.' Also Bianchi, t. ii. l. v. § 18, n. 10, pp. 350-353; Gosselin, t. ii. c. iii. a. 1, § 2, p. 246 seq.

§ 11.

It may still be objected that this explanation is scarcely satisfactory, since John of Salisbury, at whose request Hadrian IV. issued his decree, bases the Papal constitution upon the donation of Constantine, and relates how the Pope sent the king through him a gold ring with a splendid emerald, as a sign of investiture.[1] It may well be said in reply that Innocent III. sent a precious ring to King Richard I. of England,[2] when there

was no question of feudal relations between them; that John of Salisbury gave a reason for the investiture which accorded with the views of the day and the intention of the king, but of which the Pope never said a word; and that the English writer may easily have gone beyond the intention of the Pope. Moreover, it is extremely probable that Henry II. may have desired from the Pope an outward sign which would right him in the eyes of the bishops and chiefs of Ireland, and may even have wished to receive the land in fief from the Roman Church. When afterwards, in 1172, Alexander III. admonished the king to restore order and Christianity, to root out crime, and to improve the condition of the island, he declared that the Roman Church had rights in the island distinct from those which were hers in the great countries on the Continent; and he demanded that where the Church possessed no privileges, the king should bestow such upon her.[3]

[1] Joh. Saresb. Metalogr. l. iv. c. xlii. p. 945: 'Ad preces meas illustri regi Anglorum Henrico II. concessit et dedit Hiberniam jure haereditario possidendam, sicut literae ipsius testantur in hodiernum diem. Nam omnes insulae de jure antiquo ex donatione Constantini, qui eam fundavit et dotavit, dicuntur ad Romanam Ecclesiam pertinere. Annulum quoque per me transmisit aureum smaragdo optimo decoratum, quo fieret investitura juris in gerenda Hibernia.'

[2] Innoc. III. l. x. Ep. 218; Reg. Imp. Ep. 5, p. 1001.

[3] Alex. III. Ep. 1002, p. 884: 'Et quia, sicut *novit* tuae magnitudinis excellentia, *Rom. Ecclesia aliud habet jus in insula, quam in terra magna et continua*, nos eam de tuae devotionis fervore spem fiduciamque tenentes, quod jura ipsius Ecclesiae non solum servare vellis, sed etiam ampliare, et *ubi nullum jus habet, id debes sibi conferre*, magnificentiam tuam rogamus et sollicite commonemus, ut in praescripta terra jura B. Petri studeas sollicite conservare, et si etiam ibi non habet, tua magnitudo eidem Ecclesiae jura *constituat et assignet*, ita quod exinde regiae celsitudine gratias debeamus exsolvere copiosas et tu primitias tuae gloriae et triumphi Deo videaris offerre.—Dat. Tuscul. xii. Kal. Oct. (1172).'

§ 12.

Hadrian IV., himself an Englishman, did not foresee the abuses to ensue from the English rule, and he cannot be held responsible for them. His rescript, which was the cause of much perplexity to the Irish in later times,[1] may have been obtained on the English side by *obreption* (giving a false reason)

and by *subreption* (suppressing the truth). In spite of the resistance of the Irish, no steps seem to have been taken formally to rescind the rescript.[2]

The supposition of obreption and subreption is in fact still admissible, and the dogma of the infallibility of the doctrinal definitions of the Pope by no means binds us to consider every Papal publication without distinction as a rule of faith and morals. The right of the Pope to dispose at will of foreign lands, whether Christian or infidel, has never been in this sense defined. It is still possible that Papal Briefs may be obtained by corrupt and unjust officials; that information may be falsified, and abuses tolerated; all this in no way affects the article of faith, which teaches that the holder of the supreme teaching office, by the supernatural assistance of God, will never be suffered to propose to the acceptance of the faithful in a binding form error in the place of religious truth. Above all things it is necessary in the Church to distinguish between the divine element and the human element. In spite of the sins of men, Catholic Christendom persevering in strict obedience to its Head will never be led away from the true faith or into error; for this we have the Word of God. A Council, in spite of the human failings of its members, has the assistance of God, though only as regards the actual definition; and in like manner all the faults of the Popes and their surroundings do not set aside the assistance promised and granted to the successor of St. Peter, not for his own benefit, but for the benefit of the Church, and to preserve the purity of the Faith.

[1] Döllinger, Papstfabeln, p. 80, note, quotes White, Lynch, Lanigan, and MacGeoghegan.

[2] Innoc. III. l. vi. Ep. 75 (Migne, ccxv. pp. 70-71): 'Quia per statuta canonica sententia Sedis Apostolicae non negatur in melius posse commutari, cum aut surreptum aliquid fuerit, aut ipsa pro consideratione temporum et aetatum seu necessitatum gravium aliquid dispensatorie ordinare decrevit, et secundum jura civilia principes contra res judicatas in auditorio suo examinari restitutionem in integrum permiserunt.' Cf. c. xx. de Rescript. i. 3; c. v. de J.J. Rest. i. 41. Peter the Venerable, l. i. Ep. 34 (Migne, clxxxix. p. 170), writes to Cardinal Aimericus as to a Papal order burdensome to the monastery of Clugny: 'Laborate, obsecro, ut in melius sententia commutetur quia mirum sapientibus videri non debet, si homini tantis totius mundi curis in diversa distracto quilibet sua quaerens *subri-*

pere potuit, sed valde mirum videbitur, si postquam perniciosum cognoverit, tantus pastor ovibus non providerit.' Cf. S. Bern. Ep. 46, ad Honor. II. p. 153; Ep. 231, c. iii. ad Card. Episc. p. 419; Ep. 268, ad Eugen. III. p. 472.

§ 13.

Many complaints have been made as to the falsification of Papal Bulls and Briefs. Long ago Martin I. had punished the Archbishop Paul of Thessalonica for this offence,[1] and the eighth Council renewed the statute published in 649, against the falsifications of Photius;[2] from the time of the Carolingians they became more frequent,[3] and were indeed carried on as a business.[4] The Popes, especially Innocent III., upon whom a deception had been attempted, enforced severe penalties for falsification.[5] The Synod of Trêves in 1227 treated the falsification of Apostolic Briefs as a reserved case to the Pope,[6] and the *Bulla Coenae* afterwards did the same.[7] Many documents were falsified to the prejudice of the Apostolic See, especially at the time of the dispute on investiture and the combats between the Church and civil rulers;[8] nor where they always recognised at once in their true colours. Are we to believe that the Popes, who for seven centuries took such strong measures against falsifications, themselves made use of them to extend and exalt their power? Everything considered, is this probable, or even credible?

[1] Mansi, x. 834 seq. 847 seq.

[2] Can. 6, Mansi, xvi. pp. 163, 164, 402.

[3] Caroli, Antichità Italiche, v. 61. Hurter, Innoc. III. vol. i. p. 108. For examples, vide Joh. Saresb. Ep. 129; cf. Ep. 89; Phillips, Kirchenrecht, iii. § 154, pp. 648-650; Petrus Bles. Ep. 53, p. 92, ed. Mog. 1600; cap. Super eo, 2, de Crimini Falsi, v. 20; cap. Ad audientiam, 3, h.t.

[4] Raumer, Gesch. der Hohenstaufen, vi. p. 190. Neander, Kirchengeschichte, ii. p. 442 seq. 3d ed.

[5] Gesta Innoc. III. n. 42, p. lxxxv. Hurter, l.c. p. 116 seq. Martene, Coll. Amplissima, i. 1031. C. Dura saepe, 4, h.t. C. Licet ad regimen, 5, h.t. C. Quam gravi, 6, h.t. C. Ad falsariorum, 7, h.t. Cf. Schmalzgrueber, in l. v. tit. 20. Many of the Pope's letters are on this subject: vide l. i. Ep. 235, ad Aep. Rhem. p. 202; l. i. Ep. 262, 349, pp. 221, 322, 324; l. ii. Ep. 29, p. 359; Supplem. Ep. 234 (Migne, ccxvii. p. 273 seq), l. xv. Ep. 223, p. 755 seq.

[6] Conc. Trevir. 1227, c. 4. Mansi, xxiii. p. 28. Hefele, v. p. 842.

[7] Cap. iv. h.t.; v. 9, in Libr. Sept. Many of the Popes took strong

measures against this crime: vide Bzovius, Ann. Eccl. a. 1490; Nota in Natal. Alex. H. E. saec. 15 et 16, c. i. a. 10, t. xvii. p. 49, ed. Bing. For the question, cf. Hausmann, Geschichte der Päpstlichen Reservatfälle, p. 136 seq.

[1] Vide Anti-Janus, p. 121, especially n. 118, 119. To these belongs the first French Pragmatic Sanction ascribed to Louis IX., of which Rigant. in Reg. Cancell. i. § 1, n. 15, says: 'Apud cordatiores Gallos suspecta et spuria est;' it has been denounced as spurious by Thomassy, Lenormant, Affré, and others (Ami de la Religion, 5 Sept. 1854, p. 562). Its spuriousness has been proved by Rösen (Die Pragmatische Sanction, Münster, 1854), and by Ch. Gérin (Les Deux Pragmatiques Sanctions, 2d edit. Paris, 1869).

§ 14.

We have seen that the great political power wielded by the Popes in the Middle Ages came into being naturally from the mutual working of the spiritual and temporal law, and was based upon principles which had been long in existence. It had long been exercised before any one troubled himself to examine into its origin and make reflections upon it, for it was only from the middle of the twelfth century that this was done to any great extent. No one believed, and no one could have believed, that the extensive powers of the Pope had been obtained by a formal system of deceit, of falsification, and of usurpation, as has since been imagined by the centuriators of Magdeburg and other Protestants, in the last century by Febronius, and in our own day by *Janus*. It was reserved for the modern spirit to devise this aburdity,[1] and even to attempt to prove that falsifications existed before and after Pseudo-Isidore, from Gratian up to the Dominicans, and from them on to the Jesuits. In the chapter of *Anti-Janus* which treats of these falsifications[2] I have examined these hypotheses, which are all more or less untenable; on very few points has any refutation of my statements[3] been attempted, and these with but poor success. The Pseudo-Isidore question has been discussed by numerous writers,[4] who have come to conclusions very different from those of *Janus*. Of still less weight is the allegation that St. Thomas Aquinas suffered himself to be taken in by spurious editions of the Fathers, in his doctrine of the Papal authority and teaching power.[5] In general the proofs brought forward have been

very weak. When an alteration in a text might most easily have arisen from bad handwriting or from an error, it has been at once set down to intentional deceit, while no pains have been taken to prove that any falsification was intended.[6] When the possibility of such an intention was the utmost that could be conceded, its existence in fact has been without further inquiry admitted and presumed. This has indeed been carried so far, that, contrary to all rules of justice, ancient authors, who have quoted from still earlier writers texts not perfectly correct, have been for this reason accused of general falsification, without its being thought necessary to bring forward any convincing proof; and while the proof of mere possibility is sufficient for the accusers, they will not admit that of an exactly contrary possibility in favour of the accused.[7]

[1] J. Shepherd (The History of the Church of Rome to the End of the Episc. of Damasus, London, 1851) maintained that even before 500 a large number of documental proofs, *e.g.* Cyprian's letters, were forged as a foundation of the Roman supremacy; this is declared even by Guericke, Kirchengeschichte, i. p. 259, n. 1, 9th ed., to be a monstrous assumption.

[2] Eng. trans. ch. viii.

[3] Cf. also the Laacher Stimmen on the Ecumenical Council, i. Part vii.; Das Concil and der Neu-Jansenismus, p. 27 seq.

[4] All the writings on canon law, from Ballerini down to Möhler, Walter, Schulte, Richter, Phillips, and Hinschius, supply proof of this.

[5] On this assertion, cf. Anti-Janus, p. 116; my criticism of Dr. Döllinger's declaration, pp. 31, 32; and Dr. Raich, Die Auflehnung Döllinger's Gegen die Kirche, Mainz, 1871, p. 61 seq. The Dominicans, R. Bianchi and Alex. Reali, as also Dr. Uccelli, have written in Italian against it. Dr. Uccelli found in the Vatican library the codex used by St. Thomas. Its publication will be thorough proof of the absurdity of the supposition of intentional falsification.

[6] Gratian's c. vi. d. 19 is termed a gross falsification by Janus, p. 120, the Correctores Romani having before Janus' time added the true text of St. Augustine, concerning whom he says nothing. Melchior Canus, de loc. Theol. l. v. c. v. §. Dicamus igitur, seq. 168, says on this point: 'Ubi Gratianus [or still more his predecessors Anselm and Gregory] Augustini sententiam non est assecutus. Cui errori causam fortasse praebuit codex quispiam depravatus.... Id quod ante nos .... alii viri diligentissimi deprehenderunt.' An intentional falsification is still less admissible in the case of Gratian, because early and later authorities stand equally high with him; the text of Pope Nicholas I., cited can. 1, is quite sufficient for him, and other passages prove the same; *e.g.* Jaffé, n. 3479, pp. 398, 398, ex Ivonis Decret. v. c. xxxi. Mansi, xix. 979: 'Alex. II. Philippo regi Francorum scribit, Sedis Apostolicae decreta eodem loco cum canoni-

bus habenda esse.' Cardinal Deusdedit is accused by Janus, p. 119, of falsifying the words of Pope Agatho, which falsification according to others was adopted also by Gratian, c. ii. d. 19; but no proof is offered that these are not a distinct utterance independent from the text of the Roman Synod, and they were in truth so understood by Jaffé, p. 167, n. 1629.

[7] A single quotation of a spurious passage is made ground for vehement accusations; but such accusations pass unnoticed in persons who agree with the accusers; *e.g.* Professor Schulte, who cites the false letter of the Council of Nicea to Pope Sylvester (iii. p. 28), and even gives it a first place among his proofs. On the letter, vide Hefele, Conc. i. p. 421 seq.

Part II. The Donation of Constantine.

§ 1. In what it consisted. § 2, 3. The question as to the time and place of its origin. § 4. Its extension in the eleventh and twelfth centuries. § 5. Seldom used by the Popes. § 6. Its genuineness disputed since the fifteenth century. § 7. Its insufficiency as an explanation of the Papal power.

§ 1.

Many searching inquiries have been made into this document in latter times, and it has been much used against the Church;[1] but the Roman See has never thought its rights were menaced by the result of these inquiries, nor looked on this apocryphal document as its 'strongest bulwark,' and the 'foundation of the system of universal sovereignty exercised by the Popes for a thousand years.'[2]

The document, which exists in various Latin and Greek versions,[3] grants to the Pope and the Roman clergy: (1) certain marks and insignia of honour; to the Pope, the tiara, the lorum, and imperial robes; to the clergy, the dress of the highest imperial officials, the right of riding on horses with white trappings, together with the privileges of the imperial senate, —on these points the author enters more into detail, having apparently such things most at heart;[4] (2) the ecclesiastical supremacy of the Pope above other patriarchs, and above all other Churches, and his office of judge in questions of faith and worship; (3) temporal sovereignty over Rome and the provinces, towns, and castles of all Italy, or the western regions. In this last part the different versions vary much.

[1] Döllinger, Die Papstfabeln des Mittelalters, München, 1863, p. 61 seq.

[2] Schulte, p. 68.
[3] Biener. de Collect. Canonum. Eccl. gr. 1827, pp. 72, 79. Döllinger, l.c. p. 65.
[4] Döllinger, p. 72.

§ 2.

Respecting the time and place in which this document had its origin, and respecting its author, as many hypotheses have been made, as in the case of the Pseudo-Isidore Decretals, with which it also has found a place.

The fact, so important in its bearing on later times, that the first Christian emperor, instead of choosing Rome as his seat, made a new dwelling for himself on the Bosphorous, so that in the old capital of the world the splendour of the Pontificate might be developed more fully, unhindered by the majesty of the emperor, gave rise to the renowned tales and legends of Constantine, which took fantastic shapes, and later gave rise to the documents in their present shape.

The first trace of the gift has been thought to have been found in a letter of Pope Hadrian I. in 777. But the likeness between an expression in this letter and the spurious document is far from justifying the conclusion that Hadrian made use of the document; its composer may quite as well have adopted phrases out of the letter of Hadrian. Hadrian merely says that Constantine exalted the Roman Church, and invested her with rights in Italy;[1] it cannot in fact well be doubted that from times as early as these she was in possession of considerable revenues drawn from landed possessions, and even of temporal power.[2] Hadrian's words prove that he knew nothing of the document. He would not most surely have made appeal, both before the Frankish and Greek courts, to isolated and comparatively insignificant donations, had he had by him so extensive a deed of gift from the most renowned of emperors, devised expressly in order to claim from these courts for the Roman Church larger possessions in land. He would have contradicted himself had he, in one and the same Brief, attributed to himself on the one hand unlimited power over all Italy by reason of the supposed donation of Constantine, and had then spoken only of patrimonies in ce-

tain regions as gifts from various emperors and other Christians.[3]

Neither did Hadrian's immediate successors know of this document. The hypotheses by which it is said to have been devised in 767 under Paul I.,[4] or perhaps even in 752,[5] have no real foundation. The prudent Popes of that time, so weak in political and military matters as to be forced almost continually to claim the aid of the Frankish kings, could never have entertained the adventurous project of obtaining for their See a dominion over all Italy; mention is everywhere made of certain specified territories, never of North Italy or Lombardy. After 774 there was no longer any cause for the deception,[6] and before 752 it could have had no success,[7] and the same may be said also of the intermediate space of time.[8]

[1] Cod. Carolin. Ep. 59 (al. 49), Cenni, Mon. Dom. Pont. i. 305: 'Sicut temporibus B. Sylvestri Rom. Pontificis a.s. rec. piissimo Constantino magno imp. per ejus largitatem S. Dei Cath. et Apost. Romana Ecclesia elevata atque exaltata est, et *potestatem in his Hesperiae partibus* largiri dignatus est, ita et in his vestris felicissimis temporibus atque nostris S. Dei Ecclesia, i.e. B. Petri Apostoli germinet atque exultet et amplius atque amplius exaltata permaneat.' The expression *hae partes Hesperiae* is not identical with the *occidentalium* regionum *provinciae*, and *potestatem* is not necessarily to be translated by '*the* power;' moreover, Hadrian does not say, 'urbem Romam et omnes totius Italiae et occidentalium regionum provincias, loca, et civitates,' which are the words of the document according to Mansi, ii. 603 seq. Floss (Die Papstwahl unter den Ottonen, Urk. pp. 9-23) gives the facsimile of the text of the Donatio.

[2] Zaccaria, Dissert. de Rebus ad Hist. et Antiqu. Eccl. pertinentibus, Fulgin. 1781, t. ii. p. 75 seq. dissert. 10. Gosselin, vol. i. pp. 230 seq. 242 seq.; ii. p. 421.

[3] Cf. Gosselin, ii. pp. 420, 421; Civiltà Cattolica, May 7, 1864, ser. v. vol. x. p. 305 seq.; Chilianeum, vol. v. p. 63 seq. Hadrian's words l.c. are: 'Sed et cuncta alia, quae *per diversos imperatores, patricios etiam et alios Deum timentes* pro eorum animae mercede et venia delictorum *in partibus Tusciae, Spoleto, seu Benevento atque Corsica*, simul *et Sabinensi patrimonio* B. Petro Apostolo sanctaeque Dei et Apostolicae Rom. Ecclesiae concessa sunt et per nefariam gentem Longobardorum per annorum spatia abstracta atque ablata sunt, vestris temporibus restituantur; *unde et plures donationes in sacro nostro scrinio Lateranensi recordatas habemus.*'

[4] Petrus de Marca, de Conc. Sac. et Imp. l. iii. c. xii. n. 3. Cf. Pag. ad Baron. a. 324, n. 16.

[5] Döllinger, l.c. p. 67.

[6] Ib. p. 69.

[7] Ib. p. 67.
[8] Civiltà Cattolica, l.c. p. 315 seq..

§ 3.

The questionable document first confronts us in the so-called Colbertine collection, which is somewhat older than Pseudo-Isidore,[1] and certainly of Frankish origin. The three authors by whom this document was first cited in the ninth century belong also to the Frankish kingdom—Æneas, Bishop of Paris (about 868),[2] Ado of Vienne (died 875),[3] and Hincmar of Rheims (died 882).[4]

There are many grounds for believing that Charles' coronation as emperor, which was ill received in the East, and also the loss of the Greek dominion in Italy, had to do with the origin of the false document. That its author intended it for the Greeks is plain from the passages against the Greeks, quoted also by Æneas, on the transference of the imperial throne to Byzantium, and the relinquishing of Rome to the Pope, the expressions as to the reverence due to the Papal chair, and the mention of the four Eastern Patriarchs, as to whom the West was almost indifferent.[5] The author for the most part placed the ancient legend of Sylvester in the mouth of the Emperor Constantine, and at the same time gave expression in a rude form, and with glaring exaggerations, to the ideas of his own time.[6] There is nothing to prove the author to have been a Roman ecclesiastic;[7] he is quite as likely to have lived in France, to which conclusion all early traces of the work would lead us. Up to 1053 the document is never found to have been made use of in Rome; and up to that date it is most certain that Rome made no endeavour to circulate it.[8]

[1] Ballerini, de Antiquis Collectionibus et Collectoribus Canonum, P. ii. cap. viii. n. 4; P. iii. c. vi. § 5, n. 19 (Migne, PP. Lat. t. lvi. pp. 143, 255).

[2] Tractatus adv. Graecos, c. ccix. (D'Archery, Spicil. vii. p. 111; Migne, t. cxxi. p. 758). He adds: 'Cujus (donationis) exemplaribus Ecclesiarum in Gallia consistentium armaria ex integro potiuntur.'

[3] Adonis Chronicon. Aetas vi.

[4] Hincmar, Ep. 3, c. xiii.: 'Constantius M. imp., Christianus effectus, propter amorem et honorem SS. Apostolorum Petri et Pauli sedem suam,

urbem scil. Romam, Papae Sylvestro *edicto privilegii* tradidit et sedem suam in civitate sua, quae antea Byzantium vocabatur, nominis sui civitatem ampliando aedificavit.'

[5] Zaccaria, diss. cit. de Patrimoniis, S.R.E. cap. ii.: 'Nec fortasse a vero aberraret, qui renovatum a Leone III., Carolo M. imperatore coronato, occidentale imperium ejus fingendi Constituti Gallo cuipiam scriptori occasionem, sub saeculi ix. initia, dedisse conjiceret, ut Constantini M. auctoritate Graecorum Italiae a suo imperio defectionem ea Caroli inauguratione confirmatam aegre ferentium impetum ferociamque comprimeret.' Cf. Thomassin, P. i. l. i. c. v. n. 14. 'Commentitio quidem hoc diplomate excidebant imperatores Graeci spe recuperandi occidentis imperii; at cum ante ejus evulgationem Pipinus Carolusque M. Romanae Ecclesiae tam multa donassent, tam multa sibimet vindicassent, quae imperii ante fuerant, non magnopere de titulis et jure decertandum sibi Graeci existimarunt, qui re vera tam amplas imperio suo abscindi provincias sive ignavia sive virium inopia passi erant' (Hincmar, tom. ii. p. 206).

[6] The idea arose early that it was the destiny of Rome to become, instead of the capital of the ever-decreasing Roman Empire, the capital of Christendom, which was daily on the increase. Leo M. (Sermo 82, al. 80, cap. i.) says on the city of Rome: 'Isti (Petrus et Paulus) sunt, qui te ad hanc gloriam provexerunt, ut gens sancta, populus electus, civitas sacerdotalis et regia, per sacram Petri sedem caput orbis effecta latius praesideres religione divina quam dominatione terrena.' Prosper. Carm. de Ingratis: 'Sedes Roma Petri, quae pastoralis honore Facta caput mundo, quidquid non possidet armis, Religione tenet.' Cf. Auct. de Vocat. omnium Gentium, l. ii. c. xvi.

[7] Döllinger, p. 67.

[8] Ibid. p. 76.

§ 4.

It was in the eleventh century that the false document first became more widely known. Bruno, Bishop of Toul, a native of Lorraine, when he became Pope Leo IX., cited for the first time, in his letter to Michael Cærularius,[1] long passages from this deed, the validity of which he never doubted; after him it was appealed to by Peter Damiani;[2] Gregory VII. never made use of it.[3] The apocryphal document was held in far higher esteem in the twelfth century, especially after Gratian's disciples incorporated it into his Decretal.[4] In the contest between the convent of Farfa and the Roman nobles (1105), it was by no means maintained that Constantine 'could only have meant to give spiritual rights in Italy'[5] to the Pope; the assertion disputed was that the emperor delivered over to the Holy See the whole of Italy, with all the rights of the empire, and the rights o

private persons.[6] The words of the unsuspected document were taken now in a wider, now in a more restricted sense, as this or that clause was cited according to the special aim or occasion.[7] The Greeks who came to know of the document treated it as authentic; the Western heretics also took its validity for granted, even those among them who insisted on complete poverty for the clergy, such as the Waldenses, the Beguards, the followers of Dolcino and of Wicliffe; as a rule they merely maintained that Constantine had erred in endowing the Church with earthly possessions.[8] Also the defenders of the civil power in the Middle Ages for a long time felt no doubt as to the authenticity of the deed, and only raised various objections against its legality and its binding power.

Many attempted to make out that the gift was extravagant and unjust, and that Constantine in making it had failed in his duty as emperor, and that only into the hands of the Roman people could he have resigned his power.[9] The legality of the document, far more than its authenticity, was called in question.[10]

[1] Ep. ad Caerul. c. xiii. xiv. Will, Acta et Scripta, pp. 72-74. Constantine here gives Sylvester 'tam palatium nostrum quam Romanam urbem et omne Italiae seu occidentalium regionum provincias, loca et civitates.'

[2] Opusc. iv. Opp. iii. p. 33. Hard. Conc. vi. 1122.

[3] Döllinger, l.c. pp. 77, 78, 84. Janus indeed declares this to be an error (p. 114), but gives no proof of his assertion; there is no mention of the donation in the Pope's letters. In relation to Corsica there were many other documents to which Gregory might appeal.

[4] Palea, in can. 13, 14, dist. 96.

[5] Döllinger, p. 81.

[6] The monks amongst other things say: 'Postquam aeternam potestatem per B. Petrum Apostolum Rom. Sedes adepta est a Christo, *temporale* etiam suscepit *privilegium* ab Imperatore Constantino, quod jure possidere creditur aeterno .... quia Constantinus *non jura privatorum nec ex toto terreni imperii dominium* B. Sylvestro concessit .... *non omnis* ergo *Italia* in terrenis facultatibus patrimonium B. Petri Ap. Ecclesiae exstitit nec unquam Pontificum Romanorum *ex toto* dominium fuit' (Murat. Rer. Ital. Scr. ii. ii. pp. 648, 637 seq.).

[7] Robert Abolant speaks only of a privilegium left to the Popes; Sicard of Cremona only of regalia; Ptolomy of Lucca only of the rights and privileges of the senate, granted by Constantine to the Roman clergy; Amalrich Augerii of the grant of the imperial insignia, and the sovereignty of the city of Rome, which last is also quoted by the Belgian monk Bald-

win of Ninnove; Lucas of Tuy speaks of the Regnum Italiae; Gervasius of Tilbury says the emperor endowed the Pope with kingly but not imperial power over the western provinces; the author of De Regimine Principum, l. iii. c. x. that he resigned the imperial power to the Pope; the compiler of the Ottimo Commento on Dante (c. 1333) that he gave over to him all the dignities of the empire; another commentator on Dante, about 1375, that he gave him the States of the Church as they existed in the fourteenth century; a third says the patrimony in Tuscany; while Canon Pandulf Colonna of Siena speaks once again of Rome, Italy, and all the western kingdoms (Döllinger, pp. 86-88, 90, 93 seq.).

[8] Friedberg, l.c. p. 24 n. quotes Reinerii Summa, ap. Martene et Durand. v. 1775. Cf. Moneta, iv. 412, tract. de Haer. Pauper. de Lugd. ap. Mart. l.c. p. 1779; Pseudo-Reiner. c. Wald. Bibl. Max. PP. xxv. 264; Pillichdorf, c. Eosd. ib. p. 278; La Nobla Leizon, ap. Raynouard, Choix des Poésies, Paris, 1816, ii. p. 79. Cf. Döllinger, p. 101 seq.; Friedberg, p. 56 seq. Wicliffe's prop., thirty-third of the forty-five condemned at Constance, says: 'Sylvester Papa et Constantinus imperator errarunt Ecclesiam dotando.' Dante (Inferno, c. 19), Marsilius, Occam, and Gregory of Heimburg, also set themselves against these donations (Admon. Gold. i. 560).

[9] Glossa ad tit. 6, Auth. Coll. i. Quomodo oportet ad voc. generi. Gloss in book iii. art. 63, of the Sachsenspiegel. Auct. anon. de Henr. VII. apud Dönniges; Acta Henr. VII. ii. 158. Nikol. Dubois ap. Dupuy, Hist. du Différ. Preuves, p. 46. Dante, de Monarch. l. iii. c. x. p. 277, ed. Schard. Anton. Rosell. c. lxiv. Gold. i. 290. Anon. de Jurisd. Imp. Döllinger, pp. 96, 97. Cf. Friedberg, p. 53 seq.

[10] Molina, tract. de Justit. et Jure, ii. disp. 25, n. 4, p. 52.

§ 5.

The document being so generally acknowledged, no surprise could be felt had the Popes of the Middle Ages, following the example of Leo IX., appealed frequently to it; but as a fact they seldom did so. Innocent III., who might so often have had occasion to use it, makes no mention of it in his Decrees and Briefs, and cites it only in a speech on St. Sylvester.[1] Gregory IX. made use of it in 1236, when reminding his adversary Frederick II. of the devotion of the great Emperors Constantine and Charles towards the Church.[2] Innocent IV. (1245) declared to same emperor that it was not Constantine who *first* gave temporal power to the Apostolic See, for he pointed out that its germs were in fact contained in the fulness of power bestowed by Christ upon St. Peter, and he therefore represented the gift of Constantine rather as a surrender than as a gift.[3]

Nicholas III. (1278) mentions only the ceding of the city of Rome to the Pope ;[4] and John XXII., ' in his refutation of Marsilius of Padua, makes merely a passing reference to the fact that Constantine gave over the imperial throne to Sylvester.'[5] Clement V. likewise had mentioned only the rights granted to the Roman Church by the emperors, and in the first place by Constantine.[6]

[1] Sermo de S. Sylvestro, Opp. i. 97, ed. Venet. 1578.

[2] Bréholles, t. iv. p. 914 seq. Rayn. a. 1236, n. 24. Hefele, v. 891.

[3] In Raumer, Hohenstaufen, iv. 178. Cf. Alvar. Pelag. de Planctu Eccl. l. i. c. xliii. He says: ' Fertur dixisse.' The passage is not wholly free from doubt. Aug. Triumph. Summa de Eccl. considers the donation as a restitution.

[4] C. 17, Fundamenta, i. 6, de Elect. in 6.

[5] Raynald. a. 1327, n. 31. Döllinger, p. 93.

[6] C. un. ii. 9, Jurejur. in Clem.

§ 6.

These few quotations from the false document are all that occur in Papal publications; the Popes place upon entirely different grounds the powers exercised by the Apostolic See; moreover, from the fifteenth century the authenticity of the document was on many grounds called in question with the full knowledge of the Popes. It still found defenders in the sixteenth and seventeenth centuries ;[1] but from the time of Baronius their number continually decreased.[2] A decided majority of theologians sided with him ;[3] and at length the document was acknowledged by all to be a forgery.

[1] Amongst others Albert Pighe, Augustin Steuchus, John Faber, &c., quoted by Pichler, ii. pp. 689, 690.

[2] Baron. a. 324, n. 108-110; a. 1191, n. 52; a. 1192, n. 73.

[3] Pag. a. 324, n. 13. Ceillier, Hist. des Aut. t. iv. p. 177; t. viii. p. 145. Cenni, Monum. Dominat. Pontif. t. i. p. 304 seq. Zaccaria, diss. de reb. ad H. E. pertin. t. ii.; diss. 10, c. ii. n. 4, 5. Daude, Hist. Univ. et Pragm. Wirceb. 1754, t. ii. p. 177 seq.

§ 7.

The Papal power was in the main based not upon individual documents, but upon principles and ideas which held universal

sway. However closely the mediæval documents may be examined, it must be conceded, in the words of a non-Catholic theologian,[1] that 'the moral power upon which the temporal sovereignty of the Popes rested was no other than the power of the ideal, to which nations educated in Christianity were highly susceptible.'

[1] C. B. Hundeshagen, 'Ueber einige Hauptmomente in der geschichtl. Entwicklung des Verhältnisses zwischen Staat und Kirche,' in Dove's Zeitschrift fur Kirchenrecht, vol. i. p. 259.

ESSAY XIII.

THE DOCTRINE OF THE SUPERIORITY OF THE CHURCH AND OF HER AUTHORITY IN MATTERS TEMPORAL.

THROUGHOUT the Middle Ages it was maintained as a doctrine that two powers have come down from God, the spiritual and the temporal, both indispensable to mankind, and appointed to work together in peace.[1] Concord between the two was recognised as the foundation of the well-being of peoples and kingdoms, and discord as their ruin.[2]

The Church and State, distinct in aims and means, in extent and compass,[3] are nevertheless to work together for the well-being of mankind, mutually supporting and aiding one another.[4] But although both powers are coördinate and independent in their own domain,[5] still a certain order of precedence must exist between them, since they do not precisely coincide; and in case of conflict preference must be given to one over the other; and in this case the preference was given to the Church. Let us now examine more closely—I. the doctrine of the superiority of the Church, and II. of her authority in matters temporal.

[1] Bossuet, Defens. Decl. Cleri. Gallic. l. i. sect. 2, c. xxxiii.; and he often quotes witnesses on this point, especially Popes Gelasius I. and Nicholas I., Isidore of Seville, and others, who may also be found in Gratian, dist. 10 and 96, and elsewhere. See also Just. Nov. 6; Praef. Nov. 42; Capit Franc. v. 119; Conc. Paris, vi. 829, l. i. c. iii. Dante (de Monarch. l. iii. ap. Schard, de Jurisd. p. 283) says: 'Opus fuit homini duplici directivo secundum duplicem finem: sc. summo pontifice, qui secundum revelata hominum genus perduceret ad vitam aeternam, et imperatore, qui . . . ad temporalem felicitatem dirigeret.' The Greeks also continually represented the two powers as given by God (Theod. Stud. l. i. Ep. 16, p. 961, Nicephoro Imp.).

[2] Ivo Carnot. Ep. ad Paschal II. (Duchesne, Scr. Fr. iv. 241): 'Novit paternitas vestra, quia cum regnum et sacerdotium inter se conveniunt,

bene regitur mundus et floret et fructificat Ecclesia. Cum vero inter se discordant, non tantum parvae res non crescunt, sed etiam magnae res miserabiliter dilabuntur.' Cf. S. Bernard. serm. 46, in Cant. Cantic.

[2] Cf. Pignatelli, Consult. can. t. ix. cons. 61, p. 113 seq.; consult. 62-66, p. 117 seq.

[4] Bianchi, t. iii. l. i. c. i. § 1, n. 4, p. 8 seq.

[5] Innocent III., in a letter to the King of France, 1207, speaks of the two powers as coördinate (l. vii. Ep. 79; Migne, ccxv. pp. 361, 362); also to the princes of Germany, several years earlier (Reg. super Negot. Imp. Ep. 2; Migne, ccxvi. p. 997 seq.).

Part I. The Doctrine of the Pre-eminence of the Church.

§ 1. As maintained by the Fathers. § 2. The figure of the two swords. § 3. St. Bernard. § 4. The material sword in defence of the Church. § 5. Utterances of the Popes. § 6. The preëminence of the Church defended throughout and beyond the Middle Ages. § 7. Each power independent in its own sphere. § 8. Distinction between them. § 9. Separation of Church and State to be rejected on principle. § 10. The State has not to fulfil the highest end. § 11. Even Protestants defend the superiority of the Church. § 12. Decisions of Popes on the scope of her power. § 13. Ideal of the truly God-fearing State. § 14. The Decretal 'Novit.' § 15, 16. Opinion of Innocent III. § 17. The Church necessarily able to judge of sin.

§ 1.

The doctrine of the superiority of Church over State is by no means a speciality of the Middle Ages, as has often been asserted; it belongs rather to the patristic age, and was defended by the Fathers of the Church. Thus St. John Chrysostom says: 'The Church is above the State, in the same way as the soul is above the body[1] and heaven above the earth,[2] and indeed far more.' Gregory of Nazianzen unites the two comparisons when he says to those holding civil dignities (dynasts and archons): 'Take not amiss my freedom of speech: the law of Christ subjects you to my power and to my throne; for we bishops also exercise a sovereignty, and, moreover, I add, a greater and more perfect sovereignty; or is perchance the spirit to be inferior to the flesh, the heavenly to the earthly?'[3] St. Isidore of Pelusium writes: 'The government of the world rests on kinghood and on priesthood: although the two differ widely—for one is as the body, the other as the soul—they are nevertheless des-

tined to one end, the well-being of their subjects.'[4] The sovereignty exercised by bishops is, according to him, more sublime and more arduous than that of kings.[5] The dignity of the priesthood is expressed by St. John Chrysostom in yet another way: 'Those who are rulers on earth have indeed the power of binding, but it affects bodies merely; but the priestly power of binding touches souls, and penetrates heaven; what priests do here below is confirmed by God above, and the judgment of the servants is approved by the Lord (St. John xx. 23; St. Matt. xviii. 18). What power can be mightier? All judgment has been given by the Father to the Son (St. John v. 22); and I know that the disciples received all judgment from the Son; a power as much exalted above earthly power as heaven above earth and the soul above the body.'[6]

This figure of the body and soul was employed also in the Middle Ages.[7] Precisely similar to the image of heaven and earth is that of the sun and moon, made use of by Popes Gregory VII. and Innocent III.,[8] and by many other writers.[9] Moreover, the words of Pius IX., so ill received by the public press, in which he said that the Church was stronger than heaven, are used by St. John Chrysostom.[10]

[1] Chrys. hom. 15, in 2 Cor. n. 5 (Migne, t. xi. 509): *ὅσον οὖν ψυχῆς καὶ σώματος τὸ μέσον, τοσοῦτον πάλιν αὕτη διέστηκεν ἐκείνης ἡ ἀρχή.* Thus also Constit. Apost. ii. 34: *ὅσῳ ψυχὴ σώματος κρεῖττον, τοσούτῳ ἱερωσύνη βασιλείας.* Cf. Chrys. de Sacerd. iii. 1 (Migne, xlviii. 6, 41): *τοσοῦτον ἀνωτέρω βασιλείας, ὅσον πνεύματος καὶ σαρκὸς τὸ μέσον.* The spiritual power is called by him *ἀρχὴ πνευματική*, hom. 3, in Coloss. n. 5 (Migne, t. lxii. p. 323).

[2] Chrys. hom. cit. n. 5 (p. 507): *Αὕτη γὰρ ἡ ἀρχὴ τοσοῦτον τῆς πολιτικῆς ἀμείνων, ὅσον τῆς γῆς ὁ οὐρανὸς, μᾶλλον δὲ καὶ πολλῷ πλέον.* Thus also as early as the second century the Jewish-Christian writings (Testamenta xii. Patriarcharum Test. Judae, c. xxi.), in which Neander (Kirchengeschichte, i. p. 201, n. 1, 3d ed.) discovers already the Hildebrandian principle: *ὡς ὑπερέχει οὐρανὸς τῆς γῆς, οὕτως ὑπερέχει θεοῦ ἱερατεία τῆς ἐπὶ γῆς βασιλείας.* Also Pope Stephen V. (al. VI. 885-891), Ep. ad Basil. Imp. (Mansi, xvi. 421): *ὅσον διάφορον οὐρανοῦ πρὸς τὰ ἐπὶ γῆς.*

[3] Naz. Orat. xvii. n. 8, pp. 322, 323, ed. Maur.

[4] Isid. Pelus. l. iii. Ep. 249.

[5] Id. l. iv. Ep. 219. Cf. Chrys. hom. 34, in Hebr. n. i.: *ὅσον καὶ τὸ τῆς ἀρχῆς μεῖζον καὶ ὑψηλότερον*: hom. 4, in verba Isaiae, Vidi Dominum, n. 5 (Migne, lvi. 126): *μείζων ἡ ἀρχὴ αὕτη*, with reference to 2 Paral. xxvi. 18. Naz. Or. ii. n. 10, p. 17.

[6] *Τοσούτῳ μείζονα ἐξουσίαν, ὅσῳ γῆς τιμιώτερος ὁ οὐρανὸς καὶ σωμάτων ψυχαί*, l. iii. de Sacerdot. n. 5 (Migne, xlviii. 643).

[7] Vide Ivo Carnot. Ep. 106 (al. 51), ad Henric. Reg. Angl. p. 50: 'Sicut sensus animalis subditus debet esse rationi: ita potestas terrena subdita esse debet Ecclesiae regimini, et quantum valet corpus, nisi regatur ab anima tantum valet terrena potestas, nisi informetur et regatur ab ecclesiastica disciplina.' Hugo, de Sacram. Fid. l. ii. P. ii. c. iv.: 'Quanto autem vita spiritualis dignior est quam terrena et spiritus quam corpus, tanto spiritualis potestas terrenam sive saecularem potestatem honore ac dignitate praecedit.' Honor. Augustod. de Praecell. Sacerd. ap. Pez. Thes. Anecd. ii. i. p. 180. Innoc. III. Resp. in Consist. ad Nuntios Philippi, Baluz. Epist. Innoc. t. i. pp. 647, 692. Reg. Ep. 18. Alex. Halens. p. 3, q. 40, m. 2: 'Quamvis in ordine potestatum saecularium nullus est major rege vel imperatore quemadmodum in ordine potestatum spiritualium nullus major est Papa, sed tamen collatione facta potestatis spiritualis ad saecularem potestas spiritualis est supra corporalem, spiritus supra corpus.' Thom. 2, 2, q. 60, a. 6, ad 3: 'Potestas saecularis subditur spirituali sicut corpus animae, et ideo non est usurpatum judicium, si spiritualis praelatus se intromittat in temporalibus, *quantum ad ea, in quibus ei subditur temporalis potestas*.' Cf. Auct. de Regim. Princip. l. iii. c. x., and Auct. Quaest. in utramque Partem Disput. a. 3 (falsely ascribed to Ægidius Romanus in Goldast. Mon. ii. 100): 'Nam quantum distat oriens ab occidente, corpus ab anima, corporalia a spiritualibus, tantum distat auctoritas Summi Pontificis a culmine imperialis aut regiae dignitatis.' Vide also Gerson, Opp. iii. 1083; Bellarm. de Rom. Pont. v. 3, de translat. Imp. i. 13; Occam, Quaest. Octo Decis; Goldast. ii. 331; Somm. Virid. ap. Gold. i. 77.

[8] Greg. VII. l. vii. Ep. 25. Cf. l. viii. Ep. 21. Innoc. III. c. Solitae, 6, § Praeterea, de M. et O. i. 33; l. i. Ep. 401; Reg. Ep. 32, p. 1035.

[9] Gerhoch, de Corrupto Eccl. Statu. praef. c. iii. (Galland. Bibl. PP. xiv. 549): 'Spiritualia, quibus praeest Dominus Papa, diei, et temporalia, quibus praeest Dominus Imperator, nocti comparantur. Ecce duo luminaria,' &c. Berengos. serm. de Myst. Lig. Dom. (Bibl. Max. PP. xii. 374): 'Isti (rex et pontifex) sunt enim qui ex antiquo divinitatis dispensatione bifaria, in firmamento Ecclesiae quasi duo magna convenere luminaria, quatenus in his, quae sunt saeculi, et in his, quae sunt Dei, luminare minus nocti et luminare majus debeat praeesse diei,' &c. Alvarus. Pelag. de Planctu Eccl. l. i. c. xxxvii.; Friedberg, de Fininm inter Eccl. et Civitatem Regundorum Judicio, l. i. § 3, p. 17: 'Ita erat medii aevi tempore usitatem, ut Frid. II. imp. non dubitaret, in exordio legum regno Neapolitano constitutarum se cum luna, cum sole Papam comparare atque se minorem illo proclamare' (Canciani, Leg. Barb. i. 305). Innoc. III. l. i. Ep. 401 (Migne, PP. Lat. ccxiv. p. 377): 'Sicut universitatis conditor Deus duo magna luminaria in firmamento coeli constituit, luminare majus, ut praeesset diei, et luminare minus, ut nocti praeesset: sic ad firmamentum *universalis Ecclesiae, quae coeli nomine nuncupatur*, duas magnas instituit dignitates: majorem, quae quasi diebus animabus praeesset, et minorem, quae quasi noctibus praeesset corporibus: quae sunt pontificalis auctoritas et regalis potestas. Porro sicut luna lumen

suum a sole sortitur, quae revera minor est illo quantitate simul et qualitate, situ pariter et effectu: sic regalis potestas ab auctoritate pontificali suae sortitur dignitatis splendorem, cujus conspectui quanto magis inhaeret, tanto majori lumine decoratur, et quo plus ab ejus elongatur aspectu, eo plus proficit (deficit) in splendore.'

[10] Ἡ ἐκκλησία οὐρανοῦ ἰσχυροτέρα. Serm. antequam iret in exilium, Opp. iii. 429, ed. Migne.

§ 2.

The figure of the two swords is also much used in the Middle Ages. Abbot Godfrey of Vendôme[1] employs it even before St. Bernard, to whom Bossuet ascribes its first use,[2] but not with quite so wide an application. The spiritual and the material sword were both to serve for the defence of the Church; and the material sword was to support the spiritual. Bishop Hildebert of Mans, when unjustly kept prisoner by the Count of Perche, wrote to Bishop Herlo: 'Most surely it was not without reason that two swords were found on the Apostles (St. Luke xxii. 38), since both are still to be found on the members of Christ's body; as the priest is a member of Christ, so likewise is the king.[3] I am speaking to one who has knowledge; thou knowest the meaning of the sword of the king and the sword of the priest: the first is the penalty imposed by the courts of justice; the second, the severity of Church discipline. If any one would set me free with the sword of the king, I would not ask that on my account the sword of the priest should be drawn.'[4] Frederick Barbarossa appealed to Hadrian IV. on the precise ground that it was to these two swords that God had delivered the government of the world.[5] According to St. Richard, Archbishop of Canterbury, these two swords seek mutually for aid, and the one lends to the other its own power.[6] Other writers also make use of this figure;[7] and in Gratian may be found a passage imputed (though questionably) to Pope Nicholas I., in which the bishops of Gaul received an order to force plunderers of Church property to make restitution, both by the spiritual and material sword.[8] Innocent III. also employs the figure to point out the necessity of mutual support between the two powers, which in a certain sense complete each other.[9] Thus in 1208 he called upon the King of France to unite his sword with that of the

Church, for the chastisement of evildoers, since the spiritual and material sword have to aid each other.[10]

[1] Goffr. Vindocin. Opusc. iv. (Migne, PP. Lat. clvii. p. 220): 'Voluit .... spiritualem et materialem gladium esse in defensionem Ecclesiae.'

[2] Bossuet, l.c. l. i. sect. 2, c. xxxvii. p. 181. This is corrected by Leroy, l. iii. c. xvi. p. 308; and Fleury, Hist. Ecclés. t. xiv. p. 301; t. xvii. p. 41.

[3] Sacerdos in the Middle Ages usually meant bishop.

[4] Hildeb. Opp. l. ii. Ep. 18 (Bibl. PP. xxi. 136).

[5] 'Qui (Deus) in passione Christi Filii sui duobus gladiis necessariis regendum orbem subjecit.' Radev. de Gest. Frid. i. 10. Baron. a. 1159, n. 52. Cf. Ep. ad Manuel. Comm. ap. Goldast. Constit. Imper. iv. 72.

[6] Richard. Cant. Ep. ad Omn. Episc. Angl. inter Petri Bles. Ep. 73, Opp. i. 110, ed. Paris (Migne, ccvii. p. 226 seq.).

[7] Alan. ab Insulis Distinct. Diction. Theol. v. Gladius (Migne, ccx. p. 803): 'Hi duo gladii significant duos judices, sc. judicem *fori* et judicem *poli*, i.e. regem et sacerdotem.' Petrus Vener. l. i. Ep. 17, Gerhoch, l.c.; also in Bennettis, Privileg. S. Petri, t. vi. pp. 555, 556.

[8] C. 2, Auctoritatem, c. xv. q. 6. Cf. Jaffé, Reg. n. 2027, p. 238. Another passage attributed to him, c. 6, c. xxxiii. q. 2, says: 'S. Dei Ecclesia .... gladium non habet nisi spiritualem.'

[9] L. vii. Ep. 54, Regi Bohemorum, p. 339: 'Sic sibi spiritualis et materialis gladius mutuae mutuant subventionis auxilium, et vicissim, communicant vires suas, ut defectus ope vicaria suppleant et uterque alterius perficiat imperfectum.' L. x. Ep. 141, Comitibus et Baronibus Siciliae, p. 1235: 'Unde cum spiritualis et materialis gladius mutuo se debeant adjuvare juxta quod legitur: *Ecce duo gladii hic*, idem rex (Frid.) nobis humiliter supplicavit, ut eos, qui terrenam non metuant potestatem, per censuram ecclesiasticam cogeremus ad exhibendum sibi subsidium opportunum.' In an inverted order he says, l. vii. Ep. 212, p. 527: 'Gladium quem Petrus *per semetipsum* exercet, non metuunt, qui sunt extra ovile Domini constituti;' it is therefore necessary, 'ut saecularis gladius potestatis, qui ad malefactorum vindictam a regibus et principibus bajulatur (Rom. xiii. 4) ad vindicandam evaginetur injuriam Salvatoris.' He says that the spiritual sword is often despised unless supported by the material. Reg. Ep. 79, l. ii. Ep. 1, p. 539. Innocent asks the Polish Duke Ladislaus in 1206, l. ix. Ep. 217, p. 1060: 'Did the Lord give to thee the sword, that thou mightest turn it against the bowels of thy mother?'

[10] L. xi. Ep. 28, pp. 1358, 1359. Cf. l. xii. Ep. 69, p. 77: 'Quia, sicut ab orthodoxis doctoribus et Catholicis expositoribus perhibetur, non solum spiritualis gladius, quo utitur sacerdotalis auctoritas, sed etiam materialis, quem exerit saecularis potestas, est necessarius ad vindictam malefactorum, laudem vero bonorum.'

§ 3.

Even stronger are the words of St. Bernard, in which he calls upon Pope Eugenius III. to draw the two swords, which

both belong to Peter: one to be drawn at his command, the other by his hand, as often as is needful.[1] In his great work dedicated to the same Pope, he says: 'He who denies to thee the (material) sword does not seem to have weighed sufficiently the words of our Lord, "Put thy sword into the scabbard." It is thy sword, and is to be drawn on a sign from thee, although not with thine own hand. For if it in no way belonged to thee, the Lord of the Apostles, when they said to Him, "See, here are two swords," would not have made answer, "It is enough," but "It is too much." Both swords therefore, the material and the spiritual, belong to the Church; the first to be drawn *for* the Church, and the second *by* the Church.'[2]

According to St. Bernard the material sword belongs, in the first place, to civil rulers; but it must in any event be used according to the advice and counsel of the Church. It does not belong to the Church absolutely, but only in a certain sense, and in so far as it is bound to give her aid, to support and defend her. The figure is meant to show forth, in the first place, the necessary harmony of the two powers, and also the principle that earthly power has for its end the well-being and furtherance of the kingdom of Christ. John of Salisbury,[3] and many other writers,[4] teach the same thing; the Emperor Frederick II. also employed this figure in the same sense,[5] and many Popes have done the same.[6]

This teaching was opposed for the first time in the fourteenth century, by the champions of the civil power, who maintained that the allegory had no weight as proof; that it might easily bear quite another meaning;[7] and that even supposing the two powers to be intended by the two swords, it by no means necessarily followed that both belonged to St. Peter, or to any other Apostle.[8]

[1] Bern. Ep. 256 (Opp. i. 257, 258): 'Exercendus nunc uterque gladius in passione Domini, Christo denuo patiente, ubi et altera vice passus est. Per quem autem nisi per vos? Petri uterque est: alter suo nutu, alter sua manu, quoties necesse est, evaginandus. . . . Tempus et opus esse existimo ambos educi in defensionem orientalis Ecclesiae.'

[2] De Consider. l. iv. c. iii. (Opp. i. 438): '*Tuus* ergo et ipse, tuo forsitan nutu, etsi non tua manu evaginandus. Alioquin si *nullo modo* ad te

pertineret et is, dicentibus Apostolis: *Ecce duo gladii hic*, non respondisset Dominus: *Satis est*, sed: Nimis est. Uterque ergo Ecclesiae, et spiritualis sc. gladius et materialis; sed is quidem *pro* Ecclesia, ille vero *ab* Ecclesia exercendus, ille sacerdotis, is militis manu, sed sane ad nutum sacerdotis et jussum imperatoris.' Cf. ad Milit. Templi. Exhort. c. iii. Marsilius, P. i. c. xxviii. (Goldast. ii. 229), calls these words a contradiction because St. Bernard had said: 'Quid tu denuo *usurpare* gladium tentas, quem semel jussus es reponere in vaginam?' and *usurpare* is used of what does not belong to one. But apart from the various meanings of the word, the material sword, according to St. Bernard, is only to be denied to the Pope *secundum quid*, inasmuch as it is not to be used by him *propria manu*, and St. Bernard is therefore guilty of no contradiction.

[3] Polycrat. l. iv. c. iii.

[4] Henricus Gandav. Quodlibet, vi. q. 33. Cf. Huet. Henri de Gand. p. 186; Alvar. Pelag. de Planctu Eccl. l. i. c. vi.; Memoriale Pot. Reg. ap. Murator. R. It. Scr. viii. 1078; Durand. Specul. Jur. de Leg. 50, i. 50, ed. Venet. 1576; Berthold. in Grimm, Freidanks Bescheidenheit, l. ix.; Schwabenspiegel, c. i.; Ruprecht von Freising, Rechtsbuch, c. ii. p. 11, ed. Maurer.

[5] Const. a. 1220, § 7 (Walter, Fontes, p. 80): 'Et quia gladius materialis constitutus est in subsidium gladii spiritualis,' &c.

[6] Greg. IX. ap. Matt. Paris, a. 1237. Innoc. IV. ap. Höfler, Friedrich II. p. 223.

[7] This is not denied even by Bellarmine, de R. Pont. v. 5, de Verbo Dei, iii. 3. Joh. de Paris, de Pot. Reg. et Pap. c. xx.: 'Quod dicitur de duobus gladiis, non est nisi quaedam allegatio allegorica, ex qua non potest sumi argumentum, quia secundum Dionysium mystica theologia non est argumentativa. Et Aug. dicit in Ep. ad Vincent., quod allegoria non sufficit ad probationem alicujus, nisi quum ejus habeatur aliunde auctoritas manifesta. Possum etiam dicere, quod per illos duos gladios intelligunt omnes mystice verbum Dei juxta illud Apostoli Eph. vi. 17: *Accipe loricam fidei et gladium spiritus, quod est verbum Dei.* Quod autem dicitur duo gladii, propter vetus et novum testamentum, et per duos gladios intelligunt gladium verbi et gladium instantis persecutionis . . . (Luc. ii. 35; 2 Reg. xii. 10). . . . Et horum unus erat Apostolorum passive, qui ab eis sustinendus, sc. gladius persecutionis, alius autem erat eorum proprie, quia ab eis pro tempore competente evaginandus, sc. gladius verbi Dei.'

[8] Ib.: 'Dato autem, quod per illos duos gladios, quos habebant Apostoli, intelligantur duae potestates, sc. spiritualis et temporalis, quae licet dicantur ibi esse, tamen non dicuntur ambae esse Petri vel alterius Apostoli. Nam unum eorum non tetigit Petrus, sc. saecularem, qui suus non erat. Alium vero tetigit, sc. spiritualem, quem solum Dominus dixit esse suum, et tamen non statim evaginandum a Petro (Joh. xviii. 11), quia certe non debet statim, sed cum magna deliberatione et in necessitate magna judex ecclesiasticus uti suo mucrone spirituali, ne contemnatur. Posito igitur, quod per illos duos gladios mystice illae duae potestates intelligantur, pro nobis est, quia cum essent duo, Petrus non habuit suum nisi unum (vide Matt. x. 34, gladium; Ps. xliv. 4; Apoc. i. 16, xix. 15). Ecce ergo quod a Christo non habet nisi unum.' Some writers merely contend that the

Church can make use of the earthly sword only on just grounds, with much deliberation and in grave necessity, which was never called in question by the writers most strictly for the Church; while others ascribe this sword to the Pope so far as to allow him authority to set it in motion for the Faith. Ant. Rossellus (Gold. ii. 280): 'Gladius temporalis est Petri et Papae quantum ad potestatem, quem habet faciendi ipsum moveri pro fide, non pro aliis, et hoc modo dicitur esse Ecclesiae et esse Papae, ut verba secundum certam materiam capiantur.' The two swords were also ascribed to the Church in the sense that ecclesiastics are not incapable of possessing temporal power, and do in fact receive such by permission and concession of princes. Joh. de Paris, l.c.: 'Potest nihilominus dici, quod duo gladii ibi dicuntur fuisse et ad Apostolos pertinere, quia unus Apostolis et eorum successoribus convenit per se, quem a Christo habent, alius vero suus est aptitudine quia eis non repugnat et ex commissione et permissione principum suus erat futurus.'

§ 4.

The principle is the same set forth by the Fathers, that God has given power to emperors and kings that they may serve His kingdom, coöperate in the aims of the Church, and promote the worship of the Almighty, and that earthly kingdoms may serve the cause of the heavenly.[1] Gregory the Great expresses this in a letter to the Emperor Maurice: 'For this end has power over all mankind been bestowed by Heaven upon the piety of my sovereign, that those who strive after good may be supported, that the path to heaven may be widened, that the earthly kingdom may serve the heavenly.'[2] In the same way Leo the Great warned the Emperor Leo that the imperial power was not given him merely for the ruling of the world, but also for the protection of the Church.[3] No thought is more prominently put forward by the Fathers than that of the civil power (the material sword) being intended for the protection and furtherance of the Church.[4] Thus Bishop Ivo of Chartres writes to King Henry I. of England:[5] 'We admonish your highness, with urgent entreaties, to suffer the Word of God to be preached without hindrance in the kingdom intrusted to you, and to be ever mindful that the earthly kingdom must be always subordinate to the heavenly kingdom, intrusted to the Church.' Paschal II. (April 2, 1117) writes to the King of Denmark:[6] 'Power is rightly used when the eye is fixed on God, by whom it has been bestowed; therefore have God ever before thine

eyes; and as thou hast received power from God, strive ever to please Him through His grace. Honour the churches and priests of God, in joy and humility; protect orphans and widows; be active in administering justice, and repress with thy might all who strive against it. Suffer not any one to plunder the goods of the Church, for this is a crime of sacrilege, and for such guilt thou art responsible; since it must not be that what is bestowed for the good of many should be plundered by the violence of one. In the repression of this crime and others let the bishops of thy kingdom be thy fellow-workers, supporters, and helpers. The world is well governed when the priestly power acts in concert with the kingly.'

[1] Aug. Ep. 185, al. 50, ad Bonif. n. 19 (Opp. ii. 651, Maur.): 'Quomodo ergo reges serviunt in timore (Ps. ii. 2) nisi ea, quae contra jussa Domini fiunt, religiosa severitate prohibendo atque plectendo? Aliter enim servit, quia *homo* est, aliter quia *rex* est. In hoc ergo serviunt Domino reges, *in quantum sunt reges*, cum ea faciunt *ad serviendum illi, quae non possunt facere nisi reges.*' C. Crescon. Gram. iii. 51 (t. ix. p. 463): 'In hoc reges sicut eis divinitus praecipitur, Deo serviunt, in quantum reges sunt, si in regno suo bona jubeant, mala prohibeant, non solum quae pertinent ad humanam societatem, verum quae pertinent ad divinam religionem.' L. v. c. xxiv. de Civ. Dei: 'Felices eos dicimus, si juste imperant . . . . si suam potestatem ad Dei cultum maxime dilatandum majestati ejus *famulam* faciunt.' Isid. Sent. iii. c. liii. (c. Principes, c. xxiii. q. 5): 'Principes saeculi nonumquam intra Ecclesiam potestatis adeptae culmina tenent, ut per eamdem potestatem ecclesiasticam disciplinam muniant.'

[2] Greg. M. l. iii. Ep. 65 (J. n. 903): 'Ut terrestre regnum coelesti regno *famuletur*.'

[3] Leo M. Ep. 156, c. iii. p. 1323, Baller. He also praises the emperor for his services in religious matters; Ep. 157, c. i. p. 1339: 'Qui supra curam rerum temporalium religiosae providentiae *famulatum* divinis et aeternis dispositionibus perseveranter impenditis, ut sc. Catholica fides, quae humanum genus sola vivificat, sola sanctificat, in una confessione permaneat et dissensiones, quae de terrenarum opinionum varietate nascuntur, a soliditate illius petrae, supra quam civitas Dei aedificatur, abigantur.' Cf. Ep. 164, c. i. p. 1345: 'Agnosce igitur, auguste et venerabilis imperator, in quam totius mundi praesidium divina sis providentia praeparatus et *quid auxilii matri tuae Ecclesiae debeas*, quae te filio maxime gloriatur.' Ep. 48, ad Pulcher.: 'Res humanae aliter tutae esse non possunt, nisi quae ad divinam confessionem pertinent, et regia et sacerdotalis defendat auctoritas.'

[4] Fulgentius (Relatus Conc. Aquisgran. 836, cap. iii. can. 2): 'Prae omnibus ita se (princeps) S. Matris Ecclesiae Catholicae meminerit filium, ut ejus paci ac tranquillitati per universum mundum suum prodesse faciat

principatum. Magis enim Christianum regitur ac propagatur imperium, dum ecclesiastico statui per omnem terram consulitur, quam cum in parte quacumque terrarum pro temporali securitate pugnatur.'

[5] Ivo Carnot. Ep. 106, ed. Duret.

[6] Jaffé, Reg. Rom. Pontif. n. 4842, p. 515. Temporal sovereigns speak in precisely similar terms of their duties. Thus Charlemagne styled himself 'devotus sanctae Ecclesiae defensor humilisque adjutor' (vide Capitul. 789, Walter, Fontes, p. 46), in a letter to Leo III., 796 (Mansi, xiii. 196); thus also Louis the Pious, 833 (Baluz. Capit. i. 675, ed. 1677). Louis the German, 870, wrote as follows to Hadrian II. (Floss, Leonis P. viii. Privileg. Frib. 1858, p. 75): 'Omnipotens Deus vos, ut veridice credimus, ideo praefecit in apostolatus culmine, ne spiritalis ordo sine jure et lege laberetur in voragine confusionis, nosque vestrae pietati clementer constituit consortes, ut quod religio reprimere non valet, terror ac disciplina saecularis per nos opitulante Christo emendet.'

§ 5.

The preëminence of the spiritual power has also been set forth by the Popes. Thus Pope Gelasius wrote to the Emperor Anastasius: 'There are two powers by which the world is principally governed, the consecrated authority of the bishops and the authority of the king. Of these two, the burden of the bishops is the heavier, since they have to render account for kings themselves before the judgment-seat of God. If thou by thy dignity hast precedence amongst men, still must thou bow thy neck in obedience to ecclesiastical superiors; thou hast to direct thy course according to their judgment, not to lead them according to thine own pleasure. Still more hast thou to submit to the Bishop of the Roman See, set over all by the voice of Christ, and ever acknowledged with reverence as her head by the Church.'[1] Pope Symmachus declares to him: 'If thou be a Christian prince, thou must hearken patiently to the voice of every bishop. When the dignity of emperor is compared to the dignity of bishop, the difference between them is as great as between the charge of things human and of things divine.'[2] Gregory IV. impressed upon the Frankish bishops that the charge of souls, a bishop's office, is higher than the imperium, which is merely temporal.[3] According to Ambrosiaster, nothing like the episcopal dignity is to be found; compared to it the splendour of kings and the diadem of princes are as lead

to gold.[4] Treating of this, Erasmus of Rotterdam himself says: 'Weighed in a just balance, no king is so exalted, in virtue of his kingship, as not to be beneath the dignity, I will not say of a bishop, but even of a simple pastor of souls, in virtue of his pastoral charge.'[5] 'In the hour of death,' observes Gregory VII.,[6] 'no one calls for the assistance of an earthly king, but for that of a priest; priests are the fathers and teachers even of kings and princes, and Constantine himself considered them as his judges;[7] indeed a simple exorcist has greater power than civil rulers; for the exorcist has sway over devils, while rulers often obey them.'

[1] Ep. ad Anast. Imp. Mansi, viii. 31 (c. x. d. 96).
[2] Symmach. Libell. Apol. Mansi, viii. 213-215.
[3] Ep. ad Episc. Franc. Roccab. Bibl. Max. Pont. ii. 2.
[4] Ps. Ambros. de Dignit. Sacerd. c. ii. Opp. Ambros. iv. 569, ed. Paris, 1845, ap. Placid. Pez. Thes. Anecd. ii. 2, p. 134.
[5] Erasmus, de Ratione Concionandi, t. i. p. 67, ed. Basil. It is not therefore to be wondered at if, as Schulte brings forward (Die Macht der Röm. Päpste, p. 31, n. 2), Urban II. said in a sermon in 1096, that the lowest priest had a preëminence over every king (Migne, PP. Lat. clxxiii. Landulf, Jun. c. xxvii.).
[6] Greg. VII. l. viii. Ep. 21, pp. 597, 598.
[7] Greg. I. l. iv. Ep. 31, ad Mauric. Imp.

§ 6.

Throughout the Middle Ages, and long afterwards, the pre-eminence of the Church over every earthly kingdom was uncontested.[1] It was recognised that the order or rank of societies differed according to their end or aim;[2] that the end of the Church was the higher, indeed the highest conceivable,[3] and that the temporal must be subservient to the spiritual. The principle put forward by St. Augustine was maintained, that without true justice, which is the foundation of kingdoms, no government can endure;[4] but that true justice exists only where the true faith reigns, where Christ is king.[5] It was remembered in the Middle Ages that the Fathers had set forth the insufficiency of political and social institutions,[6] and had referred the Bible prophecies concerning the kingdom of David, and the eternal kingdom never to be overthrown, to the Church.[7] The

words of Holy Scripture as to the chastisement of the mighty who despise the law of God were ever before men's eyes (*e.g.* Wisd. vi. 2, 10),[8] and the passages as to the passing nature of all earthly power and greatness (*e.g.* Eccl. i. 1 seq.);[9] and they were used to see the first place conceded to the kingdom of God above all others.

[1] Auctor de Modis Uniendi ac Reformandi Ecclesiam (1410), c. ii. (Gerson, Opp. ii. 163): 'Ecclesia Christi est inter omnes respublicas aut societates recte ordinatas a Christo superior, nobilior ac diligibilior.' Bossuet himself (Defens. P. i. l. i. sect. 2, c. xxxiii. p. 174), after quoting the words of Pope Symmachus, allows: 'Potuisset dicere honorem sacerdotalem superiorem esse honore regio, h.e. praestantiorem, sublimiorem, digniorem, *neque quisquam negasset Christianus*; ac in aequalitate utriusque potestatis S. Pontifex merito acquiescit.' But he only says: 'Ut non dicam superior, certe aequalis est honor.' In the preceding century, Pietro Giannone himself (dell' Istoria Civile del Regno di Napoli, t. i. l. i. c. xi. p. 52, ed. 1821) writes: 'Presso di noi il sacerdozio è riputato tanto più alto e nobile dell' imperio, quanto le cose divine sono superiori alle cose umane e quanto l' anima è più nobile del corpo e de' beni temporali.'

[2] Arist. Ethic. Nicom. i. 1. Polit. i. 1. Thom. de Reg. Princ. i. 14: 'Ei, ad quem finis ultimi cura pertinet, subdi debent illi, ad quos pertinet cura antecedentium finium, et ejus imperio dirigi.' Cf. ib. c. xv. Thus even Dante, de Mon. p. 172, ed. Schard. Auctor Somnii Viridar. (Gold. i. 71). Auctor quaest. in utramque partem disput. (ib. ii. 196). Joh. de Paris, ap. Schard, pp. 193, 200.

[3] As indeed followed from its being the 'finis ultimus,' and was admitted by all authors.

[4] No work exercised greater influence upon educated men in the Middle Ages than St. Augustine's de Civitate Dei. In l. iv. c. iv. we read: 'Remota justitia quid sunt regna, nisi magna latrocinia? Quia et ipsa latrocinia quid sunt nisi parva regna?'

[5] Aug. C. D. ii. 21: 'Vera autem justitia non est nisi in ea republica, cujus conditor rectorque Christus est.' L. xix. c. xxv. he shows: 'Quod non possunt ibi esse verae virtutes, ubi non est vera religio.' C. xxiii. fin.: 'Ubi non est ista justitia, ut secundum suam gratiam civitati obedienti Deus imperet unus et summus, ne cuiquam sacrificet nisi tantum sibi, et per hoc in omnibus hominibus ad eamdem civitatem pertinentibus atque obedientibus Deo, animus etiam corpori atque ratio vitiis ordine legitimo fideliter imperet, ut quem ad modum justus unus, ita coetus populusque justorum vivat ex fide, quae operatur per dilectionem . . . . ubi ergo non est ista justitia, profecto non est coetus hominum juris consensu et utilitatis communione sociatus.' Cf. c. xiii. xiv.; also Auct. de Regim. Princ. iii. 10: 'Sicut ergo corpus per animam habet esse, virtutem et operationem, ita et temporalis jurisdictio principum per spiritualem Petri et successorum ejus.' Dante, l.c.

[6] Aug. de Civ. Dei, l. xix. c. v-vii.

[7] Aug. de Civ. Dei, l. xvii. i. 8-10, 16, 20; xviii. 29 seq. 48. Hieron. in Isai. xxii. 9-10. Euseb. in Ps. xlvii. 2.

[8] Petr. Bles. Ep. 124, p. 371, ed. Migne.

[9] Alan. al. Insulis Lib. Sentent. c. xxxvi. (Migne, ccx. p. 249): 'Quid mundanae potestates, nisi potestatum histriones? Quid saeculares dignitates, nisi dignitatum larvae et simiae? Quid terrena bona, nisi bonorum phantasiae? Certe bona terrena bona non sunt; si bona essent, numquam deessent, non abessent justis, non adessent injustis.'

§ 7.

It is the teaching of theologians and canonists, that although the political power of sovereigns is the highest of its kind in all that concerns the material aims of life and the well-being of society, and is in its own sphere second to none, still it by no means follows that in all which relates to a more sublime end it has not been subjected to another power.[1] From a Christian point of view, the end of the State is not the final and most lofty; it is inferior to the end of eternal salvation; the natural order is surpassed by the supernatural.[2] The Church ever sets before men the highest end; and it is precisely by their ends that the relation of various societies to each other is determined. Earthly well-being, which it is the duty of the State to promote, is for the Church merely a means to her own end, the attainment of eternal salvation for her members. So long as it is not denied that this life is to be referred to a future life; so long as the immortality of the soul, and the final destiny of man beyond the grave, are maintained; and so long as it is conceded that the aim of the Church is to prepare and direct mankind for this destiny, it must likewise be conceded that in questions relating to the higher end, eternal salvation, the civil power must be subordinate to the spiritual, even as the end of the one is subordinate to the end of the other.

But in things temporal the dependence of the Church upon the State is often felt most pressingly; according to Pope Nicholas I., Christian emperors, in order to attain eternal life, stand in need of the Pontiffs, while they, on their side, make use of the imperial laws in earthly matters.[3] This mutual need

brings with it a mutual dependence in all things which extend beyond the distinct province of each power.

[1] Pignatelli, Consultat. canon. t. ii. consult. 56, n. 6 seq. p. 111 seq. Bianchi, t. i. l. iii. § 17, n. 1, p. 512.

[2] Molina, de Justit. et Jure, tract. 2, disp. 21, n. 4, p. 45: 'Cum nobilitas et eminentia cujusque facultatis ex objecto et fine potissimum pensanda sit, sane pro quantitate excessus supernaturalis finis ad naturalem, salutisque spiritualis animae ad temporalia commoda pacificumque ac tranquillum hujus vitae statum judicanda erit nobilitas et eminentia potestatis ecclesiasticae supra potestatem laicam.'

[3] Nicol. I. Ep. 8, ad Mich. III. Imp. (c. vi. d. 96). St. Basil says the same, Ep. 225, a. 375 (Migne, xxxii. 840): *οἱ νόμοι, καθ' οὓς πολιτεύμεθα τὰ ἀνθρώπινα.*

§ 8.

Nevertheless, the Church being a direct institution of God, while the State has been only indirectly instituted by God,[1] the Church once more takes precedence;[2] she has, moreover, greater firmness and endurance, wider extension, more influence both on the heart and actions of men.[3] Even French Councils pronounced the higher dignity and preëminence of ecclesiastical over civil power;[4] and as late as the beginning of the seventeenth century this was a received principle with all Catholic authors.[5] Whether the civil power owed its origin to the ecclesiastical was indeed disputed, but never that it was beneath the ecclesiastical in dignity.[6]

[1] Permaneder, Kirchenrecht, § 29, p. 37, 2d ed.

[2] Bellarm. de Eccl. Milit. iii. 6. Charlas, de Libert. Eccl. Gall. l. iv. c. iv. n. 11. Bianchi, l.c. c. i. § 1, p. 6 seq. Bennettis, Vindic. Privil. S. Petri, P. iii. t. vi. p. 9 seq. Cf. Grotius, de Jure Belli et Pacis, l. i. c. iv. § 7, n. 3.

[3] Card. Turrecremata, Summa de Eccl. l. i. c. xc. proves the superiority of the Church: (1) ex antiquitate temporis (the Church began in Abel); (2) ex nobilitate originis (the Church comes direct from God); (3) ex singulari dignitate (soul and body, &c.); (4) ex majoritate auctoritatis; (5) ex nobilitate finis; (6) ex causalitate; (7) ex jurisdictione; (8) ex superioritate praelationis; (9) ex amplitudine principatus; (10) ex firmitate et fortitudine.

[4] Conc. Senon. a. 1527 (Labbé, xix. 1154, ed. Venet.): 'Verum ex sacris literis coercitus est delirantis hujus haeretici (Marsilii Patavini) immanis furor, quibus palam ostenditur, non ex principum arbitrio dependere ecclesiasticam potestatem, sed ex jure divino, quo Ecclesiae conceditur leges ad salutem condere fidelium et in rebelles legitima censura animad-

vertere; iisdem quoque literis aperte monstratur, *Ecclesiae potestatem longe alia quavis laica potestate non modo superiorem esse, sed et digniorem.*'

[5] Suarez, de Leg. l. iv. c. ix.: 'Dicendum est potestatem ecclesiasticam non solum esse in se nobiliorem, sed etiam superiorem et habere sibi subordinatam et subjectam potestatem civilem. Est conclusio haec certa et communis apud Catholicos.'

[6] Thus Joh. de Parisiis (died 1304) ap. Natal. Alex. saec. 13 et 14, diss. 9, a. 2, n. 12, t. xvi. p. 328: 'Has potestates ordinem habere *dignitatis*, non *causalitatis*, quum una non sit ab alia, sicut angeli a Deo sunt producti ordine quodam dignitatis, in quantum unus in naturalibus est nobilior altero, sed non est ibi ordo causalitatis, quo unus sit ab alio, quum omnes sint a Deo immediate creati. Intentio tamen Apostoli videtur esse de ordine cujuslibet ad finem suum proprium, non de ordine cujuslibet ad alterum. Quod patet ex hoc, quod subjungit de principe, quod minister Dei est in vindictam (Rom. xiii. 4).' Even Bluntschli (Sybel's Zeitschrift, 1861, pp. 35, 55) allows that although the deductions drawn from this doctrine were disputed, and its application restricted, still no one ventured to attack the real principle, 'the spiritual nature of the Church, and the earthly nature of the State;' also that the Ghibellines, like the Guelfs, were 'inclined' to imagine, inferior to God, from whom ecclesiastical and civil power were derived, a Christ, and that the Pope in virtue of his religious calling stood clearly in closer relation to 'this God' than the temporal emperor (the Arian Bluntschli does not of course look upon Christ as God).

§ 9.

From a Christian point of view the superiority of the Church is seen to be all the more needful from the fact that otherwise the true relation between the two orders, the natural and the supernatural, would be wanting.[1] Seen in the light of the Catholic faith, the separation of Church and State, lately become a principle, is the tearing of the world from God, of the creature from the Creator, the turning away of society from its highest end; the dividing and dismembering of each individual, by separating the characters of churchman and citizen, in a way opposed to the nature of things, and which entails endless collisions of duties, being contrary to the text, 'That which God has united let not man put asunder' (St. Matt. xix. 6).[2] In practice it presents immense difficulties, things temporal and things spiritual not being always easy to divide; for the points of contact and connection between the religious and civil domains are endless,[3] and the boundary line has not in all cases been discerned, much less determined. 'If the Church,' says an able French writer,[4] 'were merely an institution for prayer,

and the State for police; if religion confined itself entirely to speculative opinions, mystical feelings, and secret meditations, while the State had to do only with the good order and cleanliness of cities and streets; if the spiritual sphere comprehended only the innermost relations of each soul to God, the temporal only the prevention of misdeeds and plunder among men; it would then indeed be easy to separate completely two spheres which would neither have, nor be likely to have, any points of contact, and to preserve freedom to two powers knowing nothing of, and never coming across, one another. But facts overturn all these imaginary barriers and boundary lines. Religion is by no means a hermit enclosed in a cell; neither is the State contented with the part of a district policeman or beadle. Both powers aim far higher, and as yet, even without overstepping the sphere transmitted and belonging to each, neither of the two have been able to stir a step without being brought into mutual contact.' Everywhere in life they come across one another, and the one can neither avoid nor ignore the other. This being the case, it cannot be but that one should honour the other as superior. Even if it does not follow, as was maintained of old,[5] from the principle of unity in the government of the universe, that two powers, not merely distinct, but, moreover, entirely independent of each other, cannot by possibility exist side by side,[6] it may still be seen from their actual relations, that either the State must guide the Church or the Church the State; a mean between State supremacy and a so-called theocracy is no longer conceivable. Since earthly well-being is to lead to heaven, all else must be subordinate to man's final end; and the rulers of Christian States, as believers, being bound by the same duties as their subjects, a Catholic State cannot avoid acknowledging the superiority of the Church, and must necessarily look upon it as a healthful and strengthening influence, as a safeguard of its own welfare and prosperity.

[1] Martin Gerbert, de Legit. Eccl. Potestate, S. Blas. 1761, l. iv. c. i. n. i. p. 611: 'Dubitandum non est, cum finis spiritualis regiminis sit longe praestantissimus, ac hominis ad aeternam vitam destinati ultimus et supremus, ei omnes alios subordinari debere et cedere, si quae collisio officiorum contingeret. . . . Quodsi ergo in regimine saeculari sit aliquid, quod

spirituali obsit, cedat necesse est potiori juri nobiliorique fini, quidquid contra prodest, et facit ad consecutionem finis praestantioris, ex parte ignobiliore inferioreque consecrandum est, et deferendum parti superiori.'

[2] Cf. M. Liberatore, La Chiesa e lo Stato, c. i. pp. 4, 55, 175.

[3] This is dwelt on by Mr. Gladstone, a witness beyond suspicion. He says: 'Even in the United States, where the severance between Church and State is supposed to be complete, a long catalogue might be drawn of subjects belonging to the domain and competency of the State, but also undeniably affecting the government of the Church; such as, by way of example, marriage, burial, education, prison discipline, blasphemy, poor-relief, incorporation, mortmain, religious endowments, vows of celibacy and obedience. In Europe the circle is far wider, the points of contact and of interlacing almost innumerable.' Vatican Decrees, pp. 41, 42. [Tr.]

[4] Albert de Broglie, La souveraineté pontificale et la liberté, Correspondant, 25 Oct. 1861.

[5] Auctor. Quaest. in utramque part. disput. Gold. ii. 102-105. Dante, de Monarch. p. 279, ed. Schard. Alvar. Pelag. l. i. c. xxxvii.

[6] A protest against any such conclusion was raised, as early as the fourteenth century, by the author of the Somnium Viridarii, c. cii. (Gold. i. 91), and of the Quaestio in utramque partem disput. de pot. reg. et Pont. a. 5 (ib. ii. 103-105), and afterwards by Bossuet (Def. l. i. sect. 2, c. xxxiii. p. 173 seq.). He merely regards the two powers as societate foedere, pace conjunctae, with reference to Zach. vi. 12, 13; 2 Paral. xx. 11. But, observe others, if they be so united, the State acknowledges the superiority of the Church in all things relating to eternal salvation; and if it does not acknowledge this, then they are not thus united.

§ 10.

Christianity of necessity brought with it a change in the conception of the State. The State is no longer a final end to which, according to the ancient idea, individuals must devote themselves, and personal rights be sacrificed; on the contrary, individuals have essential aims, independent of the State, which they may never sacrifice to it.[1] To them the State is not above all else, but is subservient to the institutions ordained for the salvation and highest destiny of mankind.[2]

Christianity may thus seem to have withdrawn from the State a portion of its dignity, but it has in reality increased it. According to the Christian conception, the State is an ordinance of God for the maintenance of peace and justice, a figure of the moral government of the universe in this lower world. The majesty and power of rulers is based upon their receiving a

charge from God, and being His representatives; and it is their calling to do all in their power for the increase of God's kingdom, and the training of man for his supernatural destiny.[3]

[1] Cf. Aug. de Civ. Dei, xiv. 28; xv. 4.
[2] Walter, Naturrecht und Politik, § 515, p. 515.
[3] Walter, l.c. p. 516. Cf. Liberatore, l.c. c. i. a. 6, § 3, pp. 85-88.

§ 11.

Let us hear a professor of Protestant theology. The ecclesiastical privy councillor of Baden, C. B. Hundeshagen, writes:[1] 'Within the pale of Christianity there is no point of view from which it is not accepted as a certain truth that heaven is superior, earth inferior and subordinate; that the salvation of souls is incomparably above all earthly well-being; that the majesty of holiness is immeasurably beyond all other majesty; that aid in attaining heaven, in the very nature of things, takes precedence of any kind of aid towards the end of this earthly life. This is and will ever be the Christian view of life. It is absolutely inconceivable that, so long as Christianity exists, this view of life should ever cease to exercise its influence upon the hearts and minds of men.[2] Striking practical proof in support of this assertion is given us in the fact that the destiny of man for something higher than this every-day world, and that which it brings with it, has so completely taken possession of the mind of all ages of Christendom, that even such times and societies as have long ago got rid of all thought of "the undiscovered country from whose bourn no traveller returns," still have not been able to free themselves from a remnant of Christian idealism. In many regions of the great world of civilisation, as is well known, there often remains, of that which constitutes the real meaning of Christian hopes and aspirations, merely a dull colourless deposit. It is nevertheless acknowledged that spirit is above matter, the soul higher than the body, the world of thought more exalted than the world fashioned by our hands; that the ideal, though invisible, and merely an object of faith, takes precedence of all that is visible to our eyes, that may be felt, that stands before us and flatters our senses, that is the

object of sensible experience. It is not necessary, for this, to mix with men of a higher stamp; in most cases even those of a coarser nature will confess that in theory at least, above money and land, above property and pleasures, above the loaves and fishes of this earthly life, stand ideal goods: conscience, honour, freedom, right, love, truth, art, and science. They will at least allow that such a view of the world, if perhaps not "practical," is still "beautiful." This remnant of idealism has still, there can be no doubt, a certain value. Reverence for the sublime, the noble, and the beautiful, in contrast with the mean and the base, forms most surely a notable point of union between the un-Christian civilised world and the Christian, with its high conception of things sacred. It is at the same time a testimony of the permanent influence of the Christian view of life, even in such regions as have in all else rejected the Christian view; and in this respect it is a remarkable sign. Suffice it to say that the magic by which New Rome won the hearts of men to her system of the government of the State by the Church was no other than this sense of ideal good so strongly and universally awakened in mankind by Christianity.' And this, forsooth, is called theocracy![3]

[1] Abhandlung über die Entwicklung des Verhältnisses zwischen Kirche und Staat, in Dove's Zeitschrift für Kirchenrecht, Berlin, 1861, vol. i. p. 259 seq.

[2] Also the view that the end of the world's history is a holy Christian kingdom, is not purely mediæval, as Bluntschli seems to suppose (Kirchenfreiheit und Kirchenherrschaft in der Geschichte, in Sybel's Histor. Zeitschrift, 1861, P. i. p. 54); in a thousand ways, even in the Chiliastic views of the earliest Christian ages, this conviction has expressed itself.

[3] Strictly speaking, the Jewish kingdom was the only instance of theocracy; never elsewhere has the government been directly divine.

§ 12.

Theocracy, in this sense, can never be uprooted; it is inseparably bound up with Christianity; it is the ideal of Christians truly filled with faith and trained at the same time in mind. It will make itself felt amid all forms of human development as long as men have faith in Him who has said: 'Heaven and earth shall pass away, but My words shall not pass away.' But even

among Christians it is an ideal but seldom, and in part, realised. In a sense it is the same as with Christian perfection and the Evangelical Counsels. The heathen of old, especially Julian the Apostate, made sport of them, above all of St. Matthew xix. 21, as impolitic and conducive to the ruin of human society, which could not exist together with them. Amongst other answers it was urged in reply[1] that though, of course, perfection was to be desired for all, still as a fact it was not to be found in all, while virtue had ever fewer followers than vice, and wealth found more supporters than poverty. But supposing the luxury of life, the search and pursuit of earthly pleasure, the serving of mammon completely done away with, all society would be raised, ennobled, and transformed into a more sublime community. In the same way, were an end put to all wars, were all laws moulded upon the eternal justice of God, the supernatural everywhere preferred to the natural, and all spiritual claims satisfied, the pathway to the Church triumphant would be thrown open for the Church militant, and earth would be the antechamber of heaven; a true kingdom of God would arise, not indeed rendering earthly kingdoms superfluous, but raising them to a higher unity. Christ did not set aside His counsels because few were found to follow them, and in like manner the ideal of the truly God-fearing State, because it can be but seldom and approximately realised, is not therefore to be passed over in silence, and this all the less because, from a religious point of view, it is here not a question of a counsel merely, but of a duty.[2] For as the individual has to subject himself to God and to His revelation, so also has society, domestic as well as political, the family as well as the State. Christ has given to the community the same way of salvation as to the individual;[3] and as the body has its life from the soul, so the soul has its life from God, in whom we live and move and have our being.[4] The admonition 'Seek first the Kingdom of God and His justice, and all these things shall be added to you' (St. Matt. vi. 33), applies as much to the community as to individuals;[5] earthly blessings will follow after.[6] Some there are who deny the divinity and sovereignty of Christ, and withdraw their necks from His yoke;

but the King and Lord of all things does not therefore cease to possess this sovereignty; His right and His majesty are in no way impaired by this disobedience.[7] Christ is and must ever be the King of kings, and the Church is His Kingdom, to which all are bound to belong.[8]

[1] Photius, Quaest. Amphil. 100, p. 168 seq. ed. Athen. 1858; q. 101, p. 616 seq. ed. Paris (Ep. 187, ed. Mont.; Ep. 66, ed. Bal.).

[2] Moreover the counsel and the duty may become one. In so far as concerns *positive enactments*—leaving out of the question special legal relations—the union of the civil with the spiritual power is a counsel; but in so far as the *negative* side of the question is concerned—namely, that nothing shall be demanded or prescribed which hinders the attainment of the supernatural end—it is also a duty. Suarez (de Leg. l. iii. c. vii.): 'Dico potestatem civilem (etiam prout est in principibus Christianis fidei conjuncta) non extendi in materia vel actibus suis ad finem supernaturalem s. spiritualem vitae futurae vel praesentis, licet legislatores fideles in suis legibus ferendis *possint et ex parte debeant* naturalem finem et actum ipsum ferendi legem in supernaturalem finem *referre*.' He then observes: 'Hanc *relationem* posse dupliciter fieri: Primo *per positivam ordinationem*, et sic regulariter erit *in consilio*, nisi speciale praeceptum vel necessitas ad illum obligaverit. . . . Secundo intelligi potest *per negationem tantum* s. per circumspectionem nihil statuendi per hanc potestatem, quod sit contrarium fini supernaturali vel ejus consecutionem impedire possit; quae observatio et prudens cautio ex fide procedit et virtualis quaedam relatio in ultimum finem dici potest. Estque non tantum in consilio, sed etiam *in praecepto*, maxime proprio Christiani et Catholici principis, ut constat'

[3] 'Non aliunde beata civitas, aliunde homo, quum aliud non sit civitas, quam concors hominum multitudo' (Aug. Ep. 155).

[4] Joh. Saresb. Polycr. iii. 1, p. 477: 'Caro vivit ab anima, cum aliunde corpori vita esse non possit, quod semper inertiae suae torpore quiescit, nisi spiritualis naturae beneficio moveatur. Haec autem habet et ipsa vitam suam. Deus enim vita animae est. Quam sententiam modernorum quidam graviter quidem et vere, licet metrica levitate complexus est: Vita animae Deus est, haec corporis; hac fugiente Solvitur hoc, perit haec destituente Deo,' according to St. Aug. C. D. l. xiii. c. ii.; xix. c. xxvi.

[5] Chrys. hom. 22, ad 13, in Matt. n. 3 (Migne, l. vii. 305): Ζήτει . . . . τὰ μέλλοντα καὶ λήψῃ καὶ τὰ παρόντα· μὴ ζήτει τὰ ὁρώμενα καὶ πάντως αὐτῶν ἐπιτεύξῃ.

[6] Aug. (de Civ. Dei. l. v. c. xxv. xxvi.) points this out in the cases of Constantine and Theodosius I.

[7] Cyrill. Alex. l. vi. c. Julian. Migne, PP. gr. lxxvi. p. 829, D.

[8] Christus et ejus Ecclesia=rex et civitas quam condidit. Thus continually in St. Augustine, de Civ. Dei. Cf. *e.g.* l. xvii. c. xv.

§ 13.

The practical consequences arising from the superiority of the Church are by no means such as have been deduced from it, that is to say, it does not follow that the whole domain of civil rule devolves upon the Church; never has she claimed for herself so unlimited a competency. The Popes themselves, when engaged in the decision of weighty questions, have fully set forth the limits of their power. This is the case, for example, in the Decretal of Innocent III., 'Per venerabilem' (1202).[1] The Pope here clearly and emphatically expresses his high respect for the authority of temporal princes.[2] Count William of Montpellier had petitioned the Pope to legitimatise his illegitimate children, and amongst other examples appealed to that of the French King Philip Augustus. Innocent thereupon made answer: 'The King of France, since he acknowledges in matters temporal no superior, could, without violating the rights of a third party, submit himself to our judgment, as he actually did; some may even think that he himself in his own person might have given the dispensation, not as a father to his own children, but as a prince to his subjects. But thou (William) art, as thou knowest, subject to other princes; hence perhaps thou couldst not submit thyself to us without prejudice to them if they should withhold their consent; and thy authority is not such as to give thee personally in such cases the right of dispensation.'[3]

[1] C. 13, Qui filii sint legitimi (iv. 17). Innoc. III. l. v. Ep. 128. Migne, ccxiv. pp. 1130-1134.

[2] In connection with this Decretal, the canonists explain the legitimatio per rescriptum principis, and teach that, except in the States of the Church, the Pope cannot, regulariter loquendo, legitimatise bastards ad successionem hereditariam et ad munera mere temporalia, except only in a case of real necessity, touching the validity of a marriage, dispensatio in radice, or the weighty affairs of a country or province.

[3] Ib. p. 1132: 'Insuper cum rex ipse superiorem in temporalibus minime recognoscat, sine juris alterius laesione in eo se jurisdictioni nostrae subjicere potuit et subjecit in quo forsitan videretur aliquibus quod per se ipsum, non tanquam pater cum filiis, sed tanquam princeps cum subditis potuerit dispensare. Tu autem aliis nosceris subjacere. Unde sine ip-

sorum forsitan injuria, nisi praestarent assensum, nobis in hoc subdere non posses, nec ejus auctoritatis existis, ut dispensandi super his habeas potestatem.'

§ 14.

Here also mention must be made of the celebrated Decretal 'Novit,' called forth by a complaint made by the King of England against Philip Augustus of France. The feudal relation between the continental possessions of the English kings and the crown of France had often led to disputes and wars, always most disastrous, but especially so in the time of King John of England. The murder of his nephew Arthur was universally laid to his charge; and, at the suit of the Duchess Constance, Prince Arthur's mother, and of the nobles of Aquitaine, the French king summoned John before the feudal court to make his defence. John neither appeared himself nor sent representatives. The court of French peers declared him guilty of felony, and his feudal estates in France forfeited. Philip Augustus, with a strong force, invaded Normandy, and took one by one all John's continental possessions.[1] John, unable to withstand his enemy, applied to the Roman See, complaining that the King of France had violated a sworn treaty, had begun the war before the expiration of the time agreed upon, and had violently seized from him his dominions. These incessant feuds between great kings were, as Alexander III. had before declared, Sept. 6, 1173,[2] most displeasing to the Holy See, especially as they harassed and divided the powers of Christendom, and thus rendered impossible all joint undertakings, especially Crusades. Innocent III., who had not been remiss in admonitions and warnings, and had made unceasing efforts to keep peace between the two kings,[3] sent the Abbots of Casamario and Tre Fontane as legates to induce them to lay down their arms and make peace, and the rights of each party being reserved, to lay that country under an interdict whose ruler should refuse compliance. The legates were sent to both princes, who were admonished to put an end to the war.[4] The letters of the Pope, in which similar words are used to both kings, show an equal sense of his own duty, and of the respect due to their high dignity. 'Since it is well known

to thy kingly highness,' he says, 'that with us there can be no respect of persons, we are convinced that thou wilt not take it ill if even towards thee we fulfil the duty of our pastoral office, lest, together with the offence against the Divine Majesty of which negligence would make us guilty, our office may incur the censure of men by our omitting in the case of kings and princes something of that which ought to be done, making more account of their wishes than of their well-being. The word of God in our mouths must never be bound, but must be wholly free, that we may freely correct the turbulent, and as often as is profitable fulfil the word of the Apostle, which applies to us all the more the higher the office held by us in the Church.'[5] John, in the midst of so many difficulties, was ready to submit, even though the bitterest truths were told him; but Philip Augustus, who had no wish to be deprived of his victory, first delayed his answer, then deliberated with his council, and at last replied, that in matters of fiefs and vassals he was not bound to render account to the Pope, who had moreover no concern with the disputes of kings. Thereupon the Pope wrote back to Philip that nothing more nearly concerned his pastoral charge than the admonishing of Christian princes to keep the peace, that he might thereby hinder pillage, sacrilege, and other evils arising from war; that the King of England had complained to the Holy See of grievous injustice suffered at the hands of Philip, by reason of which, having in vain sought redress, he had turned to the Church; to her the king must perforce hearken, since it was a question involving grievous sin.[6] The Pope wrote in detail on the same subject to all the bishops of France in 1204, setting forth the right and justice of his interference. Hence arose the celebrated Decretal 'Novit.'[7]

[1] Pauli, Geschichte von England, iii. p. 314 seq.

[2] Ep. ad Henric. Rhem. Bouquet, xv. 938. Jaffé, n. 8283, p. 758.

[3] Innoc. III. l. i. Ep. 130, p. 117; Ep. 346 seq. p. 319 seq.; l. ii. Ep. 23, 24, p. 552 seq.

[4] Innoc. l. vi. Ep. 68. Brequigny, Diplom. P. ii. t. i. p. 278.

[5] Raynald. a. 1203, n. 54. Cf. a. 1202, n. 25. Spondan. a. 1202, n. 7, 8, l. vi. Ep. 68, 69. Migne, ccxv. pp. 64-66.

[6] L. vi. Ep. 163, pp. 176-180. Cf. ib. Ep. 164-167.

[7] L. vii. Ep. 42. Brequigny, t. ii. p. 478; c. xiii. de Judic. ii. 1.

§ 15.

Innocent declares that he has the honour and well-being of the King of France so much at heart, that he considers the exaltation of his kingdom as the exaltation of the Holy See, and that he was far from intending in any way to injure him ; that, burdened already with duties beyond his strength, he had no thought of encroaching upon the jurisdiction of the king,[1] and neither would the king desire to do anything to the prejudice of the Pope's jurisdiction ; that he had merely made use of the spiritual jurisdiction possessed by the Church (St. Matt. xviii. 15-17) ; that when brotherly admonition and correction before witnesses were fruitless, the sinner was to be brought before the judgment-seat of the Church, and if found guilty and wanting in submission, was to be cast forth and treated as the heathen and the publican ; that the right of correction, even in the case of Christian princes, had ever been inherent in the Church ;[2] that he had no intention of judging in a question of *fiefs*, but in a question of *sin*, to censure which was beyond doubt the duty of the Pope ;[3] that moreover this was a case of treaties of peace confirmed by oath and broken before the appointed time ; and that it was the duty of the Church to take cognisance of oaths.

The principle of the Decretal is that *directly* the Church has to pass judgment as to the violation of the moral law, *indirectly* as to the temporal matters involved. The Pope was not directly concerned in the execution of the sentence of the French feudal court, nor in the sentence itself, but grievous offences against the moral law fall under the judgment of the Head of the Church, who has power to proceed against the culprit with spiritual punishments. This is a power given not by men but by God, the power of binding and loosing given to St. Peter and affecting all Christians without respect of persons ; kings even are subject to it, and all the more because, with this exception, they acknowledge no superior. The Pope has not to speak of temporal matters *as such*, and can only touch them *indirectly* when they are connected with a violation of the moral law.[4] The Pope in this case is merely a subsidiary judge.[5]

[1] The Pope here clearly sets forth the independence of the king *in temporalibus*. Cf. suprà, § 13, n. 1, 3.

[2] The Fathers often rebuked emperors and kings, especially St. Ambrose (Orat. c. Auxent. de basilicis; Ep. 21, 29; Theod. H. E. v. 17), St. Martin of Tours (Sulpic. Sever. Vita S. Mart. l. i. c. xxiii.), St. John Chrysostom (Theod. H. E. v. 28). Earlier Popes had in former times rebuked the Byzantine emperors (Anastasius, Leo III. &c.) and other Christian princes. When Charles the Bald complained of the undeserved censure of Pope Nicholas I. the Pope replied, in 863: 'Scimus tamen nos, ex qua radice contra dilectionem vestram haec virga processerit; percuteris, imo pulsaris, fili, ut cautior et sollicitior valeas inveniri' (Mansi, xv. 296; Jaffé, n. 2056, p. 242). The king willingly submitted himself, as is seen by the Pope's next letter (Jaffé, n. 2066).

[3] Non enim intendimus *judicare de feudo*, cujus ad ipsum spectat judicium . . . . sed *decernere de peccato*, cujus ad nos pertinet sine dubitatione censura, quam in quemlibet exercere possumus et debemus.

[4] Phillips, Kirchenrecht, iii. § 129, specially p. 226. Bossuet (Defens. l. iii. c. xxii. p. 319) considers the Decretal as not applicable in the case, because it does not treat of the deposition of kings; but he overlooks the fact that the theologians with whom he is disputing have in this case only the general principle in view. He observes, in conclusion: 'Ceterum *in foro conscientiae*, ubi habemus confitentem ac poenitentem reum, quo pacto quaecunque peccata sunt etiam in temporalibus (sive illa sunt ambigua sive certa, sive publica sive occulta) clavibus Ecclesiae subdantur, quatenus quidem peccata sunt, nemo sanus objiciet neque ad rem ullo modo pertinet. Quod propter tardiores aut cavillatores monitum esse volumus.' Modern writers indeed, who are horrified at the wide domain of morals (Schulte, i. p. 26), do not seem willing to allow this. The text in St. Matt. xviii. 15 seq. cannot rightly be applied to the secret tribunal of conscience. Goselin (ii. p. 253 seq.) interprets the Decretal according to his theory of the directing power.

[5] Glossa, Jurisdictionem nostram, in Phillips, p. 233, n. 20.

§ 16.

This was the principle applied by Alexander III. in a question as to legitimacy[1] when appeal was made from a temporal judge to the Roman See,[2] and by Honorius III. in the dispute as to the right of succession of the Queen of Cyprus.[3] Innocent accurately distinguishes the question of civil law from that falling within his own jurisdiction. In the particular case before us King John had brought Philip's offence under the notice of the Church, and had offered to come forward himself as a witness. Philip, as the Pope admonished him, should now have called to mind the example of pious princes, such as the Emperor Valentinian, who desired ever such a supreme pastor as would

recall him to the right path by his rebuke, when he through human frailty erred;[4] Theodosius II.[5] and Charles the Great[6] directed that if one of two contending parties desired to lay his case before the Church he should be suffered to do so. The promotion of peace was the Pope's unquestioned duty; a short time before it had been beneficial to the French king; and since he had himself desired the Pope to mediate for peace with Richard Cœur-de-Lion, he had no just ground for now withstanding a like endeavour.[7] But beyond the question of the truce came that of its confirmation by oath, upon which the Church had an acknowledged right of judgment. The Pope could not appear to favour such a state of disturbance between the two kings, or to lean to one side rather than the other. His legates were to move the King of France to make a new treaty, or failing this, in conjunction with the Archbishop of Bourges[8] to make inquiry into John's grievances. John sent no representative to the Synod held by the legates at Meaux in 1204, while the French prelates appealed to the Pope.[9] The Pope received the appeal, though he would not hold them bound by the obligation they had undertaken of obeying the summons within an appointed time under pain of suspension; he was satisfied with the attendance of a few.[10] Those who made their appearance were the Archbishops of Sens and Bourges, the Bishops of Paris, Meaux, Châlons, Nevers, and other ecclesiastics; they defended the right of their king, and were prepared, in case they had fallen under suspicion, to undergo canonical purgation. The Pope released them from this, and took no further steps on the side of John, who again had sent no representative to Rome.[11] By 1206, John had lost his dominions on the Continent. When, in 1205, the Bishops of Normandy inquired of the Pope whether they were to take the *fidelitas* demanded by the French king, *i.e.* the oath of allegiance, Innocent III. replied that they must judge for themselves according to their knowledge of the circumstances, and that he could give them no answer on the subject.[12]

[1] C. 7, Causam, iv. 17, Qui filii sint legitimi: 'Nos attendentes, quod ad regem pertinet, non ad Ecclesiam, *de talibus possessionibus judicare*,

ne videamur juri regis Anglorum detrahere, qui ipsarum judicium ad se asserit pertinere, fraternitati vestrae mandamus, quatenus regi possessionum judicium relinquentes de causa principali, videl. utrum mater praedicti R. de legitimo sit matrimonio nata, plenius cognoscatis' (Migne, cc. p. 1185, seq. Ep, 1360).

[2] C. 7, Si duobus, § 1, de Appell. ii. 28: 'Tenet quidem in his, qui sunt nostrae temporali jurisdictioni subjecti; in aliis vero, etsi de consuetudine Ecclesiae teneat, secundum juris rigorem credimus non tenere.' Cf. Phillips, l.c. p. 234 seq.

[3] C. 3, Tuam, ii. 10, de Ord. Cognit. Louis VIII. of France was petitioned not to decide as to the right of succession until the judgment of the Church had been given as to the disputed legitimacy of the queen (Migne, t. ccxvi. p. 985, n. 15).

[4] C. 3, d. 63.

[5] C. 35, c. xi. q. 1; i. 1, Cod. Theodos. de Episc. Judic.

[6] Capit. vi. 366; c. Volumus, 37, c. et q. cit.

[7] Phillips observes (§ 139, p. 419) that Innocent III. did not go so far as Luther, who in 1542 ordered the Prince Elector John Frederick and Duke Maurice of Saxony to desist from their contest for the city of Wurzen, and admonished their vassals to refuse their feudal service. K. A. Menzel, Neuere Geschichte der Deutschen, ii. p. 296 seq.

[8] Phillips, p. 237 seq. Hefele, Conc. v. p. 708 seq.

[9] Innoc. l. vii. Ep. 134, p. 425, ed. Migne.

[10] He expressly declared: 'Nolumus vos hoc titulo tenere legatos, sed apellationem interpositam prosequamini, prout regno et sacerdotio noveritis expedire: quia nos ita volumus sacerdotii jure integra conservare, ut etiam regni jura custodiamus illaesa.'

[11] Acta Innoc. III. n. 130. Muratori, R. It. Scr. iii. 561. Mansi, xxii. 545 seq.

[12] L. viii. Ep. 7, p. 564.

§ 17.

The Decretal 'Novit' was everywhere, even in France itself, accepted as part of the canon law.[1] In 1329, Petrus Bertrandi, at that time Bishop of Autun, set forth these principles in the name of the clergy before the officers of the crown, making appeal to this very Decretal;[2] the same had been done before by the renowned Augustinian Ægidius of Rome, Archbishop of Bourges (died 1316), who defended the jurisdiction of the Church in mixed matters in the sense of the Decretal;[3] even the author of the *Somnium Viridarii* (c. 1382), though so little in favour of ecclesiastical claims, maintains the same; the differences of opinion mentioned by him scarcely affect the material question.[4] St. Bernard also taught that in certain contingencies (incidenter) and for cogent reasons the Church may intervene

in temporal matters,[5] and the same has been taught by the majority of theologians since his time.[6] But this did not imply that all temporal power was delivered over to the Church, or that the two powers were blended into one. The Church punished crimes which fell under her cognisance with spiritual penalties, while the State came in with temporal penalties. The State dealt with temporal cases inquisitorially and by means of its officials; the spiritual power only after a denunciation, or by reason of the publicity of the guilt, in so far as lay within its domain. The Church, whose aim was the amendment of the offender, only punished the obstinate (contumax), who, in spite of all warnings, did not amend; the State punished those who had done wrong, even when they had repented of their crime. The chastisements of the Church were intended to heal the soul (medicinal), and not primarily to expiate the crime (vindicative).[7] But the Church could not justly punish unless the sin was proved; she must take cognisance of it. Therefore kings, though subject to no vindicative punishment, and having in matters temporal no superior over them, were still not free from the spiritual power and from the healing punishments of the Church in case they sinned publicly and with grievous scandal, or misused their power to the injury of religion and of souls.[8] It did not follow that every question of law could be brought at pleasure before the spiritual court under pretext of grievous sin; if fraud (dolus) were proved, the spiritual judge was bound to refuse to hear the question in dispute.[9] Moreover, the competence of the civil judge, when real, did not cease because the Church also took cognisance of the case of a Christian guilty of public and grievous sin.[10]

[1] The Gloss on art. 1 of the Sachsenspiegels (Friedberg, p. 28, n. 6) says: 'The Pope may intervene in matters temporal to pass judgment on public sins.'

[2] Respons. ad Petrum de Cugnières in disputat. cum officialibus regni (Bibl. Vet. PP. Lugd. 1677, t. xxvi. p. 109 seq.): 'Nullus dubitat, quin cognitio de peccato ad personas ecclesiasticas pertineat. . . . Ecclesia, quae habet judicare de spiritualibus, potest et merito de temporalibus judicare, et hoc satis deducitur Xvag. de Judic. c. 13, Novit.' The royal official supposed the Decree to hold good only de facto regis Franciae, qui superiorem non habet, 'sed in aliis dicebat secus.'

[3] Cf. F. X. Kraus, in the treatise 'Ægidius von Rom' (Oesterreichische Vierteljahrschrift für Kath. Theologie, Vienna, 1862, i. Jahrgang, p. 1 seq.), in which further proof is given of the spurious character of the document printed after Ch. Jourdain's example (Un Ouvrage inédit de Gilles de Rome, Paris, 1858) by Goldast (Monarch. S.R.J. ii. p. 95 seq.), de utraque potestate s. quaestio in utramque partem disputata de potestate regia et pontificali;' a document to which Bossuet (Defens. l. iii. c. xxv. p. 329 seq.) and many others appeal. In the Quaestiones disputatae, art. 4, it is said: 'Rex Franciae secundum jura non subest summo Pontifici nec ei tenetur respondere de feudo suo, potest tamen ei subjacere *incidenter et casualiter, ratione connexionis alicujus causae spiritualis*, sicut habetur extravag. de judiciis cap. Novit. . . . Causae *mixtae* (it says) sunt causae temporales, quae connexionem quamdam habent cum spiritualibus.' Cf. Friedberg, p. 63, n. 1. In his writing, de Ecclesiastica Potestate (Kraus, l. c. p. 14), Ægid. teaches (P. iii. c. v.): 'Quod si temporalia fiant spiritualia vel annectantur spiritualibus, vel e contrario temporalibus spiritualia sint annexa, sunt spirituales casus, per quos Ecclesia jurisdictionem temporalem dicitur exercere.' Cf. ib. c. vi-viii.

[4] Somnium Virid. (Gold. i. 59 seq.): 'Concedendum est, quod principatus papalis concernit temporalia, prout de necessario concernit spiritualia, *cum ab eorum usu vel abusu surgit peccatum*, prout dicunt textus: *ratione peccati* omnes causae spectant ad forum ecclesiasticum cap. *Novit* de judiciis. Tamen *principaliter* disponendo et auctorizando nihil spectat ad Papam quantum ad temporalia. . . . Non debet se (potestas eccl.) de depositione imperatorum seu regum intromittere, quantumcunque rex vel imperator sit dignus depositione propter defectum quemcumque vel crimen, quod *non est inter spiritualia crimina* computandum, et ideo si imperator vel rex committit crimen delapidationis vel destructionis imperii sive regni vel tyrannidis vel quodcunque aliud, propter quod non immerito deponi meruit, Papa non debet eum deponere, sed populus, a quo suam recepit potestatem tacite vel expresse, *nisi illi, ad quos pertinet nollent aut non possent facere justitiae complementum*. . . . Fatendum tamen, quod Papa potest transferre imperium vel regnum *casualiter*, ut quia non est alius superior vel alter, aut imperium vel regnum est transferendum de gente in gentem *propter aliquod crimen spirituale gentis*, puta si gens illa inficiatur haeretica pravitate vel ad legem Judaeorum vel ad ritum gentilium vel sectam aliam converteretur. Si transferendum esset imperium vel regnum propter crimen spirituale, dicunt quidam, quod Papa potest *jure divino* transferre imperium seu regnum, quia *in spiritualibus et annexis eis* habet plenitudinem potestatis *quantum ad ea, quae sunt de necessitate facienda*. Alii dicunt, quod Papa in hoc casu non potest transferre imperium seu regnum, nisi laici fuerint damnabiliter negligentes vel faventes genti, a qua transferri necesse est imperium vel regnum, sed in hoc casu spectat ad Papam, *de crimine spirituali* cognoscere et denunciare illis, ad quos spectat, ut ipsum deponant; quodsi noluerint vel non potuerint, *jure divino devoluta est potestas ad summum pontificem*, et hoc quia ipse habet plenitudinem potestatis quantum ad omnia, quae sunt de necessitate facienda.'

[5] S. Bern. de Consid. l. i. c. vi. n. 7: 'Quaenam tibi major videtur et

[2] Bellarm. de Rom. Pont. l. v. c. i. seq.; to which Bossuet also l.c. makes appeal.

[3] Henric. Ost. in cap. Quod super his, t. iii. p. 129 (p. 334, § 2, n. 1).

[4] Aug. Triumphus, Sum. de Pot. Eccl. q. 23, a. 1 seq. p. 136, ed. 1584.

[5] Alvar. Pelag. de Planctu Eccl. l. i. c. xiii. p. 3, ed. 1560.

[6] Panormit. in c. Novit, cit. Sylvester in Summa de Peccatis v. Papa, § 2, f. 223, ed. 1619. Nicolaus Cevolus ex Marchionibus de Sarreto. Consult. Theol. Jurid. p. 11 (cf. Bossuet, l.c. Anton Arnauld, lettre 221, t. iii. p. 408, ed. 1727). Alex. Carerius of Padua, lib. de Potest. Rom. Pontificis adv. impios Politicos, c. v. seq. ix. seq. pp. 51 seq. 58 seq. ed. Patav. 1599.

[7] Gosselin, ii. 440 seq.

§ 3.

The large majority of theologians have perceived this doctrine to be untenable, and have proved it in detail to be so.[1] They point out that though Christ is possessed of all power in heaven and upon earth, and though the Pope must be regarded as His Vicar, still this vicariate extends over the religious domain only, and includes no unlimited temporal sovereignty, although the temporal sovereignty of a determinate district has been advantageously united with it. Unbelieving princes do not belong to the fold of Christ (St. John xxi. 15 seq.), and the Church has in general no jurisdiction over unbelievers (1 Cor. v. 12); the Pope would not most surely appoint heathens as his vicars.

Neither are the keys of earthly kingdoms committed to the Pope, but those of the Kingdom of Heaven; so that Christian rulers by the acceptance and introduction of Christianity have not forfeited their sovereign power, and Christ, who bestows the heavenly, does not deprive them of their earthly kingdom.[2] Were the Pope a universal ruler, the bishops would necessarily be everywhere rulers in their own cities and dioceses; the practical consequences of this doctrine prove its absurdity.[3] The Popes have never laid claim to any such power, but have on the contrary fully acknowledged the jurisdiction of temporal princes.[4] Even Innocent III., to whom men love to attribute the most exorbitant pretensions, distinguished perfectly between his complete and unlimited spiritual jurisdiction and his limited temporal power.[5] The Popes, when claiming the care of the heavenly

and earthly kingdom, have never said that the two were subject to them in precisely the same manner; and in maintaining the superiority of the spiritual power they have still never said that temporal power must everywhere and in all cases be subject to it, or that the temporal had its origin in the spiritual. Some are astonished at the saying of Innocent III., that Christ gave to St. Peter the government not of the whole Church, but of the whole world;[6] but in this he surely said nothing more than had been already said by Eugenius III., that Christ had delivered to St. Peter the rights of the earthly and of the heavenly kingdom.[7] The point which Innocent desired to prove was, as the whole context shows, that the primacy of the Pope has no territorial limits.[8] The power of the Pope extends to all Christian lands, not merely on earth, but also in heaven; by this is meant spiritual power only, of which it had been before said: 'Power is given to princes on earth, but to priests in heaven also.'[9]

[1] Bellarmine (de Rom. Pont. l. v. c. ii-iv.) contradicts in detail the assertion: 'Papam esse dominum totius mundi, dominum totius orbis terrarum, habere jurisdictionem temporalem directe.'

[2] Kirchenhymnus von Sedulius, Dec. 28: 'Non eripit mortalia, qui regna dat coelestia.'

[3] Mamachi (Ord. Praed.), Orig. et Antiqu. Chr. Romae, 1752, t. iv. pp. 175-179.

[4] P. c. Novit cit.; Per venerabilem (Baluz. Ep. Innoc. I. p. 676).

[5] Innoc. III. l. ii. Ep. 4 (to the consuls and people of Jesi in the States of the Church), p. 541, ed. Migne: '*Cum* Apostolicae Sedis, *jurisdictio spiritualis nullis terminis coarctetur*, imo super gentes et regna sortita sit potestatem: *in multis* etiam per Dei gratiam ejus *extenditur jurisdictio temporalis*, quae, licet aliquando visa fuerit propter quorumdam violentiam coarctari, nunc tamen eo faciente nobiscum signum in bonum, qui imperat ventis et mari . . . redit in potentatum antiquum et de die in diem amplius dilatatur.' He is referring to the regained territory of the States of the Church, Perugia, Camerino, &c. Again (l. viii. Ep. 190, p. 767), he writes: 'Licet pontificalis auctoritas et imperialis potestas diversae sint dignitatis et officia regni et sacerdotii sint distincta, quia tamen Rom. Pontifex illius agit vices in terris, qui est rex regum in terris et dominus dominantium, sacerdos in aeternum secundum ordinem Melchisedech, non solum *in spiritualibus* habet *summam*, verum etiam *in temporalibus magnam* ab ipso Domino potestatem.' The temporal sovereignty of the Pope, like that of other princes, has its origin in God. The sentence immediately following shows that he alludes to this temporal sovereignty: 'Cum igitur episcopatus Firmanus [the letter demanded from the clergy and people of Fermo

in the States of the Church obedience to the new bishop] tam in spiritualibus quam etiam temporalibus ad eum nullo pertineat mediante, nos .... electionem illius .... auctoritate curavimus apostolica confirmare ipsumque postmodum per vexillum de regalibus investire.' Cf. also ib. Ep. 191.

[6] L. ii. Ep. 209, Patr. Cpl. p. 759, ed. cit.: (Chr.) 'Petro non solum universalem Ecclesiam, sed totum reliquit saeculum gubernandum.'

[7] Jaffé, n. 6362, p. 629: 'B. Petro, coelorum regni clavigero, terreni simul et coelestis imperii jura commisit.' Gregory VII. and Nicholas II. (p. 140, n. 1, 2) had before declared the same.

[8] Immediately afterwards (p. 760) he says: 'Nam cum aquae multae sint, populi multi, congregationesque aquarum sint maria, per hoc quod Petrus super aquas maris incessit, *super universos populos* se potestatem accepisse monstravit.' Nothing else is meant than that Peter 'universum orbem susceperat *gubernandum*.' *Gubernare* is used in relation to the helm of a ship, and the Scripture narratives of Peter walking on the water are brought forward; while the others remained in the ship, he hastened *sine beneficio navis* to the Lord; thus making known that to him is committed not individual churches or provinces but the whole world. The words of the Pope (Baluz. i. 547, 548): 'Singuli (principes) singulas habent provincias et singuli reges singula regna; sed Petrus, sicut *plenitudine*, sic et *latitudine* praeeminet universis, quia vicarius est ejus, cujus est terra et plenitudo ejus,' &c. (Ps. xxiii. 1), imply merely that the power of the Pope in extent as well as in plenitude excels all earthly power.

[9] Cf. on this point Gosselin, ii. p. 248 seq.; also Petr. Dam. Opusc. v. ad cler. pop. Mediolan.; also Mamachi, l.c. p. 183. Innocent again expresses the same thoughts in l. vii. Ep. i. p. 279. The interpretation of the word *gubernandum* urged by Hundeshagen (l.c. p. 264) is quite inadmissible. Innocent has in this case the words of St. Bernard (de Consid. l. ii. c. viii. n. 16) before his eyes, which are: 'Signum singularis pontificii Petri, per quod non navem unam, ut ceteri quique suam, sed *saeculum ipsum susceperit gubernandum*. Mare enim saeculum est, naves Ecclesiae. Inde est altera vice instar Domini gradiens super aquas *unicum se Christi vicarium designavit*, qui non uni populo, sed cunctis praeesse deberet; siquidem *aquae multae*, *populi multi* (Apoc. xvii. 15).' Ita cum quisque ceterorum habeat suam, tibi una commissa est grandissima navis, facta ex omnibus ipsa universalis Ecclesia, toto orbe diffusa.'

(*b*) *The theory of the indirect power of the Church in matters temporal* (*Potestas indirecta in temporalia*).

§ 4.

The second system, which has the largest number of followers, teaches that the Church has direct spiritual power, but no direct temporal power; she is appointed to govern the faithful in the supernatural way of salvation; spiritual matters alone are in themselves subject to her, and in worldly matters she

takes no part. In so far only as temporal matters are opposed to the supernatural end, or are necessary for its attainment, has the Church to concern herself with them, and to exert her power.[1] She has in that case to correct and to guide the worldly power, and if necessary to chastise it when it turns aside from the right path of divine law, hinders the attainment of the supernatural end, and endangers the stability of religion and of the Church.[2] Neither the Pope nor the Church can directly depose a prince, but they can where the highest interests of religion are concerned declare the duty of obedience towards him to have ceased. A prince, bound by oath to maintain religion, who has broken this oath by apostasy or by persecution of the Church, who hearkens to no warnings and despises ecclesiastical penalties, may not be dethroned by his people, for this would strengthen and justify all rebellion; but the people must be declared free from their oath of allegiance by sentence of a General Council or of the Head of the Church.

This indirect power of the Church in matters temporal in general, and in relation to the dethroning of princes in particular, is not a temporal but a spiritual power. It is exerted in matters temporal only in so far as they intrench upon religion, and in this way cease to be purely temporal. Thus Innocent IV. said that the Church passed judgment in a spiritual manner on temporal matters (spiritualiter de temporalibus);[3] and in his contest with Frederick II. he declared that he was making use not of the temporal but of the spiritual sword.[4] Some theologians have attributed to the Pope in certain cases power to depose a prince; but the distinction is rather in the words than the matter;[5] they required the same conditions, and merely took the consequences of the act for the act itself; instead of the power of declaring the right of sovereignty forfeited, they supposed him to have the power of deposing (potestas deponendi, instead of potestas declarandi).[6] In general it was held that all things temporal were to be directed towards eternal goods, and that earthly goods were to be used with a view to heavenly, otherwise they would be merely abused.[7]

At first the title 'indirect power' appeared to many strange

and contrary to the common teaching; and for this reason Bellarmine's book putting it forward was placed on the Index under Sixtus V.; but before long the conviction spread that the matter of the book was sound, and that the expression 'indirect power' was well chosen; Urban VII. therefore, in 1590, had the book erased from the Index.[8]

[1] Bellarm. de Rom. Pontif. v. 6: 'Spiritualis potestas non se miscet temporalibus negotiis, sed sinit omnia procedere, sicut antequam essent conjunctae, dummodo non obsint fini spirituali aut non sint necessaria ad eum consequendum. Si autem tale quid accidat, spiritualis potestas potest et debet coercere temporalem omni ratione ac via, quae ad id necessaria esse videbitur.'

[2] Bellarm. l.c. c. vii.: 'Finis temporalis subordinatur fini spirituali, quia felicitas temporalis non est absolute ultimus finis, et ideo referri debet in felicitatem aeternam. . . . Non recte asseritur spiritualia pendere a temporalibus, ergo temporalia a spiritualibus pendent illisque subjiciuntur.' Bossuet (Def. l. i. sect. 1, c. ii. p. 87) thus gives the doctrine: 'Primum: temporalia omnia ad spiritualia referri ut ad finem, iisque per sese subordinata esse; tum: ita subordinari facultates ut subordinantur fines; atque ideo qui fini praesit, eum etiam praesidere mediis, adeoque posse et imperare omnia, quae fini adipiscendo necessaria videantur, et ea amovere quae impedimento sunt, quare omnem saecularem potestatem *eatenus* in temporalibus esse Papae subjectam, *quatenus* abusio aut negligentia Christianorum regum circa temporalia nata sunt impedire finem spiritualem, in quem habet Papa universalem Ecclesiam dirigere. Quam Papae potestatem ideo *indirectam* vocant, quod non se extendat *directe* ad temporalia, sed indirecte, *quatenus ex temporalibus spiritualia vel promoventur vel impediuntur*.'

[3] Bréholles, Diplom. t. vi. p. 496 seq. Hefele, v. 1006.

[4] Ep. ad Capitul. Gen. Cisterc. ap. Bréholles, l.c. p. 346. Hefele, l.c. p. 1007.

[5] Mamachi, l.c. pp. 182, 183.

[6] Jac. Almain. de Potest. Eccl. et Laica, q. 1, c. ix. ad c. cxci. Occami: 'Christus numquam dedit auctoritatem Petro aliquem regem a jurisdictione sua deponendi, et non dedit potestatem laicos suis dominiis et proprietatibus privandi, *nisi in casu* si contingeret principem saecularem *abuti* re sua in perniciem Christianitatis vel fidei, ita quod ille abusus in maximo esset nocumento pro consecutione felicitatis aeternae, et non negat Doctor, quia *in tali casu* Papa *possit eum deponere* etsi alii Doctores hoc negent, quamvis doceant, *habere solum potestatem declarandi* ipsum principem esse deponendum.'

[7] Auct. Quaest. in utramque Part. Disp. a. 5 (Gold. ii. 103): 'Dicendum, sicut temporalia sunt propter corpus, et corpus propter animam, ita quod haec omnia inferiora debent ad bonum animae ordinari. *Aliter non recte uteretur homo temporalibus, sed potius abuteretur.* Sic potestas temporalis *quodam modo* ordinatur ad spiritualem, in his, quae ad ipsam spiritualitatem pertinent, i.e. in spiritualibus.'

[4] Sachini, Hist. Soc. Jesu, P. v. t. i. p. 499. Vita Rob. Bellarmini, Auctore Fuligato, l. ii. c. vii. D'Avrigny, Mémoires pour servir à l'Hist. Ecclés. du 17 siècle, Nov. 1610.

§ 5.

Bellarmine treats of the indirect power of the Church in a triple application: (1) *Quantum ad personas;* (2) *quantum ad leges;* (3) *quantum ad judicia.* In relation (1) to persons, he teaches that in an ordinary way, as *judex ordinarius*, the Pope cannot depose temporal princes as he can bishops, but can only, in virtue of his right as head of Christendom, dispose of all things necessary to the salvation of souls.[1] All the schoolmen were agreed upon the main point, that in case of threatened destruction to faith and the exercise of religion, or where the preservation of the Church is concerned, this power may be exercised, especially in a case of apostasy from the faith.[2] (2) In relation to laws, the Pope, as Pope, cannot release from civil laws or abolish the laws of temporal princes except only when it is necessary for the good of souls, or when an existing temporal law is dangerous to salvation, and when at the same time princes refuse its repeal.[3] (3) As judge he can pass sentence in temporal matters only when absolutely necessary for the salvation of souls.[4]

[1] Bell. l.c. c. vi.: 'Quantum ad personas non potest Papa ut Papa *ordinarie* temporales principes deponere, *etiam justa de causa*, eo modo, quo deponit episcopos, i.e. tanquam ordinarius judex: tamen potest mutare regna et uni auferre atque alteri conferre tanquam summus princeps spiritualis, *si id necessarium sit ad animarum salutem.*'

[2] Bianchi, t. i. l. i. § 14, pp. 116-121, where it is shown how vain is Bossuet's appeal to Melchior Canus, who expressly says: 'Scholae communem consensum nonnisi impudenter et temere rejici; haeresi proximum esse, concordi theologorum scholae de fide vel moribus sententiae contradicere' (de loc. Theol. viii. 4, concl. 2. Cf. Sfondrat, Regal. Sacerd. l. i. § 17).

[3] Bellarmin. l.c.: 'Quantum ad leges, non potest Papa ut Papa ordinarie condere legem civilem vel confirmare aut infirmare leges principum, quia ipse non est princeps Ecclesiae politicus, tamen potest omnia illa facere, si aliqua lex civilis sit necessaria ad salutem animarum et tamen reges non velint eam condere, aut si alia sit noxia animarum saluti et tamen reges non velint eam abrogare. . . . At quando materia leges est res temporalis nec concernens animarum periculum, non potest lex pontificia abrogare legem imperatoriam, sed utraque servanda est, illa in foro eccle-

siastico, ista in foro civili.' Also Gloss to c. ii. Possessor de Reg. J. in 6.

[4] Ibid.: 'Quantum ad judicia, non potest Papa ut Papa ordinarie judicare in rebus temporalibus. . . . At nihilominus in casu quo id animarum saluti necessarium est, potest Pontifex assumere etiam temporalia judicia, quando nimirum non est ullus qui possit judicare, ut cum duo reges supremi contendunt, vel quando qui possunt et debent judicare, non volunt sententiam ferre.'

§ 6.

In further support of this opinion the following proofs were brought forward: Christian princes form, as is universally allowed, part of the flock of Christ confided to St. Peter (St. John xxi. 15);[1] the charge of them consists in so leading them that they may attain eternal salvation. But how can they attain it if the supreme pastor has not the means either of leading back erring sheep to the fold or of hindering the rest from going astray? This he cannot do if he is forced to look on while a prince is raging unpunished against the Church, and leading or forcing the subjects bound to him by oath away from the true religion into error. The Pope must take the necessary steps against him by censures, and if his obstinacy require it, also against those who obey his evil orders, and who have dealings with him in his official position. In case of extreme obstinacy, which is made a condition by all theologians,[2] the Pope may declare the oath taken to a prince to be no longer binding, for the purpose of moving him to amendment. No oath binds in such a way that it cannot be loosed if it endangers the salvation of souls, and no end may be preferred before the highest and last end of man.[3]

[1] Petav. de Hierarch. Eccl. l. iii. c. ix. Dogm. t. iii. p. 853 seq. ed. Paris; Bossuet, Defens. P. i. l. i. sect. 1, c. iii.; and elsewhere. Also Dante (de Monarch. l. iii. p. 284, ed. Schard), highly as he esteems the power of the emperor, insists that he should show reverence to the successor of St. Peter, 'qua primogenitus filius debet uti ad patrem, ut luce paternae gratiae illustratus virtuosius orbem terrae irradiet.' Upon which Friedberg (p. 61, § 4) remarks: 'Minime discrepans hac in re a Bellarmino, qui nihil nisi hanc reverentiam Papae vindicans tamen omnibus illum imperare praedicat.' Cf. Bernold. Rat. Apolog. c. viii. seq. p. 1222, ed. Migne.

[2] Even Joh. Saresb. Polycrat. l. v. c. vi. p. 549: 'Nec tamen licitum est favore novorum recedere a sanguine principum, quibus privilegio di-

vinae promissionis et jure generis debetur successio liberorum, si tamen, ut praescriptum est, ambulaverint in justitiis Domini. Si vero a via paulisper deflexerint, *non statim usquequaque dejiciuntur*, sed patienter corripiuntur in justitia, *donec fiat conspicuum eos pertinaces esse in malo.*'

[2] Thom. de Regim. Princip. l. i. c. xiv. p. 295, ed. 1587.

§ 7.

The Church, even in the earliest times, exercised an indirect power in matters temporal. How was it else that she forbade the faithful to undertake and administer certain employments and offices prejudicial to the welfare of their souls,[1] and that later, when persecution had ceased and the danger was lessened, she still required ecclesiastical approval for the administration and exercise of such offices and professions, though they were no longer prohibited?[2] Christians who held the post of city duumvirate, and were thus brought into close contact with heathen rites, had to remain away from church during their year of office.[3] Under Constantine, however, the Synod of Arles, 314, directed that Christian *praesides* were to bring with them into their provinces letters of communion from their bishop, and only in the event of their acting contrary to the laws of the Church were they to be cut off from communion by the bishop of the place in which they were holding office.[4] By an exercise of the same power, persons performing public penance were excluded from civil as well as military offices (militia togata et paludata), and even when it was over, these offices might not be resumed under pain of perpetual exclusion from them.[5] It is manifest that the Church has ever had the right of imposing public penance upon Christians, however high their dignity; from the penance it resulted that such persons forfeited their office and dignity; and thus in an indirect manner she deprived them of temporal power. The well-being of private persons was not more important in the eyes of the Church than that of Christian princes; she imposed penances upon the one as upon the other, even when they were not voluntarily undergone. This is one of the earliest forms in which the indirect power was exercised. Again, in time of persecution, the Church enjoined

upon the faithful flight,[6] and complete withdrawal from contact with the heathen world; and this flight was permitted even when forbidden by the heathen rulers, and although public burdens were thus avoided; and in this way she interfered indirectly in the domain of the State. This was indeed only a conditional and provisionary measure; but the same is true of all other cases of indirect interference, which only continue so long as the danger exists, so long as the sinner refuses amendment, so long as is required by the all-important end of the salvation of souls.[7]

[1] Tertull. de Idolol. c. xvii. xviii.; Apol. c. xlvi.; Minuc. Felix, in Octav., and others, in Mamachi, t. iv. p. 46.

[2] Bianchi, t. i. l. lii. § 2, n. 3, p. 452 seq. Bennettis, Vindiciae Privil. S. Petri, t. vi. p. 627 seq. Mamachi, l.c. p. 186.

[3] Conc. Eliber. c. 56. Hard. i. 256. Cf. Hefele, i. p. 151.

[4] Conc. Arelat. i. c. 7. Hard. i. 263. Hefele, i. p. 177.

[5] Morin. de Discipl. in Admin. Sacram. Poenit. l. v. c. xxiv. n. 2, p. 318, ed. Paris. Bianchi, l.c. n. 4, p. 453. Mamachi, l.c. p. 187 seq.

[6] Bossuet (P. i. l. i. sect. 2, c. xv. p. 147) cites such passages as S. Matt. xx. 28, S. Luc. xxi. 16, 17, S. Matt. x. 23, which are, however, no proof that at all times only flight is to be employed against the oppressors of the Church. The faithful were warned not to expose themselves rashly and without necessity to the anger of their foes, to be always on their guard (Conc. Eliber. c. 60; Athan. Apol. de Fuga sua; Cypr. Ep. 15, ed. Pamel.; Aug. Ep. 185, c. iii.), and not to sacrifice life for religion where both might be retained.

[7] Bianchi, l.c. § 4, n. 5, pp. 482-484.

§ 8.

The Fathers laid it down as a rule that all public temporal regulations are to be observed which are not a hindrance to religion or contrary to the commandments of God.[1] In case of danger to salvation all is to give way, according to St. Matthew xvi. 26, v. 29. He who is charged with the guidance of the faithful in the way of eternal salvation must be able to know and to set aside the hindrances to salvation. The preservation and furtherance of spiritual good, which is the charge of the Church, requires from time to time the sacrifice of some earthly good or interest, and therefore the power intrusted with earthly and temporal interests must give way

before the power intrusted with spiritual and eternal interests. Civil society rests upon the observance of natural law, distributive justice, and freedom of intercourse. By an abuse of power legitimate authorities may become illegitimate; when this happened, nations threw off such authorities in virtue of the judgment of the Church; and what she did was not by her own power to set aside a rightful sovereign, but, when a sovereign had become illegitimate, to declare him to be such.[2]

[1] Aug. de Civ. Dei, xix. 17: 'Si religionem non impedit;' c. xix: 'Si non est contra divina praecepta.' Thus St. Chrys. hom. 70, al. 71, in Matt. c. xxii. n. 2 (Migne, lviii. 656), says: 'That which is due to the emperor must be given to him τὰ μηδὲν τὴν εὐσέβειαν παραβλάπτοντα, otherwise the tribute would not be the emperor's but the devil's.'

[2] Bianchi, t. iii. l. i. § 4, n. 2, p. 478 seq.

§ 9.

Cardinal Bellarmine is usually spoken of as the originator of this doctrine; but before his time the majority of theologians taught the same. Cardinal Turrecremata of the Dominican order (died 1468) states[1] two opinions: (1) the Pope has power in spiritual matters alone, and not in temporal, with the exception of that which the Church has acquired by the gift of the faithful or of princes; (2) the Pope, as Vicar of Christ, has full jurisdiction over the whole earth in matters spiritual and temporal. The cardinal himself holds neither of these opinions, but teaches, in accordance with the system spoken of above, that the Pope has jurisdiction in temporal matters *only so far as may be necessary* for the preservation of spiritual good in himself and others, or so far as is required by the needs of the Church or the duty of the pastoral charge in the correction of sinners.[2] If it be objected from Scripture[3] that Christ had no worldly power, and desired none, and that therefore His Vicar has none, the answer is: (1) that no such power is in itself ascribed to the Pope; (2) that to our Saviour is given *all* power in heaven and on earth.[4] He is the King of kings, Lord over all, and this even as man; but He did not avail Himself of His power because He came to be an example of humility and

poverty.[5] Before Pilate, Christ expressly declared Himself to be a king; He did not say that His kingdom is not *in* this world, but only that it is not *of* this world; He was but declaring the high origin and sublimity of His kinghood.[6] When Christ paid the tribute for Himself and Peter, it was not most surely done because it was due, but to avoid scandal (St. Matthew xvii. 26).[7] In driving the buyers and sellers from the Temple,[8] Christ exercised the spiritual power, which extended to earthly things, since He paid no regard to the worldly loss of those whom He expelled.[9]

[1] Summa de Ecclesia, l. ii. c. cxiii.

[2] Ib. p. 263, ed. Venet. 1561: 'Quantum necesse est pro bono spirituali conservando ipsius et aliorum, sive quantum Ecclesiae necessitas exigit aut debitum pastoralis officii in correctione peccatorum exposcit.'

[3] St. John xviii. 36; St. Luke xii. 14; St. John vi. 15. These texts are appealed to by Marsilius Patav. Defens. Pacis. P. ii. c. iv. (Goldast. ii. 195, 196); Auctor Somnii Virid. c. xii. (ib. i. 63); Joh. Gaudun. (ib. p. 20); Occam, Quaest. Octo Dec. q. 1, c. vi. (ib. ii. 320); Gregor. Heimburg. de Injusta Usurpat. (Gold. i. 559). Cf. Determinat. Univ. Paris. apud Bulaeum Hist. Univ. Par. iv. 944.

[4] Alvar. Pelag. l. i. c. xiii.: 'Dicit *omnis*; ergo nihil excipit.' Cf. de Regim. Princip. iii. 10. For other authors, vide Molina, de Justitia et Jure, tract. 2, disp. 28, n. 2, p. 54.

[5] Joh. XXII. Extrav. Cum inter nonnullos, 4, de V.S. tit. 14. Distinction must be made between *dominium* and *usus*. Friedberg, l.c. p. 41: 'Nemo scriptorum non confitetur, omnia regna Christo tradita esse, Dei filium Dei praeditum fuisse potestate; tamen saeculare imperium numquam eum *exercuisse* probare student. Praeter omnes homines excelluit Christus, sed *auctoritate* tantum, *non executive*, Somnii Viridarii auctor ait (c. xii. 65, Gold. i. 63, 80), *dominus* quidem fuit *dominantium*, *dominans* numquam.' According to Joh. de Paris (c. ii. p. 162, ed. Schard), he reigns per fidem in cordibus, non in possessionibus. But because a right is not used, it by no means follows that it does not exist.

[6] Aug. tract. 114 et 115, n. 2, 3, in Joh. Chrys. hom. 83, ab. 82, in Joh. n. 4 (Migne, lix. 453): οὐκ ἔστιν ἐκ τοῦ κόσμου τούτου ἡ βασιλεία αὐτοῦ . . . . οὐχ ὅτι οὐ κρατεῖ καὶ ἐνταῦθα, ἀλλ' ὅτι καὶ ἄνωθεν ἔχει τὴν ἀρχήν, καὶ οὐκ ἔστιν ἀνθρωπίνη, ἀλλὰ πολλῷ μείζων ταύτης καὶ λαμπροτέρα. Cyrill. Alex. l. xii. in Joh. c. xviii. (Migne, lxxiv. 620). S. Thom. ap. Turrecrem. l.c. f. 271, 6, Sum. p. 3, q. 59, a. 2-4, in Ep. ad Hebr. c. ii. lect. 2. Pilate, according to St. Joh. xviii. 37, interpreted the words of Jesus in the affirmative sense, and our Lord did not contradict him. Aug. tr. 25, in Joh.: 'Quid? non erat rex, qui timebat fieri rex? Erat omnino, nec talis rex, qui ab hominibus fieret, sed talis qui regnum daret. . . . Praedixerunt autem prophetae regnum ejus, etiam secundum quod homo factus est Christus.'

[7] Cf. Alvar. Pelag. l. i. c. xxxvii. Bellarm. de Cler. i. 19.

[8] Some see in this the exercise of the priestly office, or that of the Ostiarius (Auct. Quaest. in utramque Partem Disput. a. 5; Occam, l. vi. c. iii.; Rosell. l.c. c. xliv.; Gold. ii. 104, 509; i. 282). Others, *e.g.* Joh. de Paris, l.c., consider that Christ here intended to teach that both powers have their origin in Him; Peter of Blois (tract. Quales sunt, P. iv. c. xii. p. 1048): 'Rex ejicit ejiciendos, ejiciendos ejicit pontifex. . . . Ille unus gladium utrumque, quando placuit, exercuit.'

[9] On the text Rom. xiii. 1 seq. vide Greg. VII. l. i. Ep. 22, ad Carthag. p. 306, ed. Migne: 'Cum ergo *mundanis* potestatibus obedire praedicavit Apostolus, *quanto magis spiritualibus* et vicem Christi inter Christianos habentibus.' Also Pope Symmachus, Ep. cit.: 'Si *omnis potestas* a Deo est, magis ergo, quae rebus est praestituta divinis. Defer Deo in nobis, et nos deferemus Deo in te. Ceterum si tu Deo non deferas, non potes ejus uti privilegio, cujus jura contemnis.' Cf. Bianchi, t. i. l. iii. § 4, n. 6-8, pp. 485-489. S. Bernard. Ep. 42, ad Henric. Aep. Senon.: 'Omnis anima, inquit, potestatibus sublimioribus subdita sit. Si omnis, et vestra. Quis vos excipit ab universitate? Si quis tentat excipere, conatur decipere.' He is speaking of subjection to ecclesiastical authorities. Bianchi, t. iii. l. i. c. i. § 7, n. 8, pp. 61, 62. The text is thus quoted also by Innocent III. in l. xi. Ep. 20, p. 1351, and by St. Anselm of Canterbury, Com. in Ep. ad Rom. h. l.

§ 10.

The more closely the ancient theologians are examined the more clear does it become that Bellarmine and the Jesuits—who were moreover especially admonished to keep, if possible, to the common teaching of the theological schools[1]—were not introducing any new doctrine, but were on this point completely in accordance with the other religious orders. The teaching of the great theologians of the Middle Ages—St. Bonaventure, St. Thomas, and others—differs in no essential point from theirs.[2] The Dominicans in the time of Bellarmine taught the same; *e.g.* amongst others, Francis Victoria (died 1546) says: 'The Pope in matters temporal may not interfere with the civil power, *unless where there is danger of grievous loss to souls.*'[3] Precisely the same was taught by theologians of various nations, religious orders, and positions, throughout the sixteenth and seventeenth centuries;[4] the same again in the eighteenth,[5] although these controversies were then shortly supplanted by others of quite another type.

[1] Institut. S.J. ed. Prag. 1757, vol. ii. p. 181 seq. Buss, Die Gesellsch. Jesu, Mainz, 1853, p. 440.

[2] S. Bonavent. de Eccles. Hierarch. P. ii. c. i. p. 274, ed. Romae, 1596: 'Jam vero possunt Pontifices ex causa amovere reges et deponere imperatores, sicut saepius accidit et visum est, quando scil. eorum *malitia* hoc *exigit* et reipublicae necessitas sic requirit.' Cf. in l. ii. d. 37. S. Thom. in l. ii. dist. 44, q. 9, a. 2; Sum. 2, 2, q. 12, a. 2; q. 60, a. 6, ad 3. Hugo a S. Victor, de Sacram. Fid. l. ii. P. i. t. iii. p. 607, ed. 1648. Alex. Hal. Sum. P. iii. q. 40, m. 1, a. 3, p. 159 seq. ed. 1575. Alex. a S. Elpidio, tract. de Eccles. Potest. c. iv. seq. ed. Taur. 1496. Roccab. Bibl. ii. p. 17, ed. 1698. Henricus Gandavens, Quodlib. vi. q. 23. A long list of writers is cited by Card. Sfondrato, Gallia Vindicata, dissert. 2, § 2, n. 25, p. 458, ed. St. Gallen, 1702; and Bianchi. t. i. l. i. § 11, p. 104 seq.; § 20, n. 3, p. 174 seq.

[3] Franc. Victoria, Relect. de Potest. Eccl. sect. 5, n. 12, pp. 36, 37, ed. 1565. Cf. sect. 7, n. 8, p. 48.

[4] Joh. Driedo, de Libertate Christ. l. ii. c. ii. Albert. Pighe, Hierarch. Eccl. l. v. Cajetan, in Apol. c. xiii. ad 6. Gretser, Defensio Controvers. Bellarmin. l. v. c. vi-viii. t. ii. p. 151 seq. ed. 1609. Mart. Becanus, de Republ. Eccles. l. iii. c. iv. Privil. 5, n. 48, p. 265 seq. ed. 1619. Refutatio Torturae Torti, Parad. 6 seq. t. ii. p. 531. Refut. Apol. Jacobi, Reg. Angl. P. ii. p. 493, ed. Lugd. 1621. Nic. Sander. de Monarchia Eccles. l. ii. c. iv. p. 77 seq. ed. 1571. Ad. Schulken, Pro Illustr. D. Roberto Bellarmino, S.R.E. Card. adv. librum falso inscriptum Apologia, 1613. Bzovius, O.S.D. de Praest. Offic. Auctorit. Rom. Pontif. c. xlii. seq. ed. Colon. 1619. Maucler, de Monarchia Divina, Eccl. et Saecul. P. iv. l. iv. c. xiii. p. 2043 seq. ed. Paris, 1622. Card. du Perron, Harangue au tiers état (Œuvres Div. p. 595 seq. ed. 1622). Baron. Annal. a. 800, n. 6 seq. Roccaberti, de Rom. Pontificis suprema in Temporal. Potest. l. i. c. i. seq. t. iii. ed. 1683. Aguirre et Dubois, in Schulken, Apol. de Potest. Pont. Max. adv. Widringt. p. 52 seq. Charlas, de Libert. Eccl. Gallic. l. iv. c. i. seq. p. 155 seq. ed. Leod. 1684. Sfondrat. Gallia vindicata, diss. 2, § 1 seq. p. 491 seq. ed. 1687. Thom. Stapleton, t. i. Controv. 3, de primo subjecto potest. Eccl. q. 1. a. 2, Paris, 1620 (dedicated to Paul V.): 'Ad puniendos atque etiam privandos regno principes saeculares a fide devios potestatem spiritualem Rom. Pontifex habet.'

[5] Bianchi, op. cit. l. i. c. i. seq. ed. Romae, 1745. Mamachi, Orig. et Antiqu. Christ. t. iv. P. i. c. ii. p. 181 seq. ed. Romae, 1752. Card. Vincent. Petra, Comment. in Const. Apost. Venet. 1741, t. i. n. 27, 28 seq. pp. 177, 178: 'The Pope has power in temporalia indirecte et secundario, quatenus conducunt ad finem supernaturalem.' T. ii. p. 120, in Innoc. III. Const. iv. n. 1 seq.: 'The Pope cannot without cause (nulla existente causa) appoint other kings.' Cf. also Roncaglia, Animadvers. in Natal. Alex. H. E. saec. 11 et 12, dissert. 2, t. xiii. pp. 605-626, ed. Bing.

§ 11.

On comparing the expressions of Bellarmine, and the Jesuits who succeeded him, with those of more ancient theologians, it will be found that, far from seeking to render the prevailing view more strict, these later theologians strove rather to modify it; not only

did they, in opposition to the theory of a direct power in matters temporal, defend the merely indirect power, but even to this they put many limitations. Bellarmine was attacked on either side: by some he was blamed for granting to the Church too little power; by others, especially by Anglicans and Gallicans,[1] for granting her too much.[2] The earlier French writers had disputed the direct power only,[3] as may be seen in the controversy under Boniface VIII., who, as they supposed, desired to reduce France to the condition of a feudatory kingdom;[4] the later writers since the seventeenth century disputed the indirect power also. Until 1615 this was still considered the prevailing doctrine;[5] but the sentence (afterwards revoked) passed by the Paris parliament in 1610, condemning Bellarmine's work, *On the Power of the Pope in Matters Temporal, against William Barclay*,[6] was followed by the censures of the Sorbonne in 1626 on the Jesuit Anthony Santarelli and the Dominican Malagula for the same doctrine;[7] and the first of the four Gallican articles of 1682 rejected altogether any power, whether direct or indirect, on the part of the Church in the civil government of kings and princes.[8]

[1] L. El. Dupin, de Antiqua Eccles. Disciplina, dissert. 7, p. 433, ed. 1688. Natal. Alex. Hist. Eccl. saec. 16, dissert. 5, J.B. Bossuet, Defensio Declar. Cleri. Gall. P. i. l. i. p. 89 seq. Maimbourg, Traité Hist. de l'établ. et prér. de l'Eglise de Rome, c. xxvi. p. 303 seq. ed. 1685.

[2] Adolph. Schulken especially wrote in defence of Bellarmine: 'Pro illustrissimo D. Rob. Bellarmino S.R.E. Cardinali adversus librum falso inscriptum apologia' (c. iii. p. 59 seq. ed. 1613).

[3] Joh. Major. in l. iv. d. 24, ad arg. 4: 'Si dicatur Maximus Pontifex esse dominus omnium et omnes alii principes ejus vasalli, et posse instituere et destituere, hoc judico falsum. Sed si intelligatur habere dominium in temporalibus *casualiter* et multum posse agere ad depositionem regum suadendo, consultando, imo alios ad gladium provocando in eos, quando sunt labefactores fidei et reipublicae Christianae prorsus inutiles, hoc mitius ferendum est nec alienum a dictis nostris.' Cf. d. 44, q. 3. Joh. de Paris, tr. de Pot. Pap. et Reg. c. vii.: 'Papa vero, qui est supremum caput non solum clericorum, sed et generaliter omnium fidelium, ut fideles sunt, tamquam generalis informator fidei et morum, *in casu summae necessitatis* fidei et morum, in quo casu omnia bona fidelium sunt communia et communicanda, etiam calices ecclesiarum, habet bona exteriora fidelium dispensare et exponenda decernere, prout expedit necessitati communis fidei.'

[4] Bianchi, t. i. l. i. § 11, n. 3, 4, pp. 108, 109.

[5] Cf. Bossuet, l. i. sect. 1, c. iii. p. 91 seq. (speech of Prince Henry of Condé-Bourbon before Louis XIII.).

[6] Fuligatti, Vita del Card. Rob. Bellarmino, Romae, 1624, p. 76. Gaillard, Notices et Extraits, vii. p. 340 seq.

[7] Bossuet, Defens. l. i. sect. 1, c. iv. v. pp. 93-95.

[8] Ib. c. i. pp. 85, 86.

§ 12.

Various objections have been brought forward against the indirect power. (1) The highest civil authority was from the beginning a lawful power;[1] it had its origin in God, and could lose nothing of its power by the institution of the ecclesiastical hierarchy:[2] Christ Himself tells us to render to Cæsar the things that are Cæsar's (St. Matt. xxii. 21). (2) Moreover, the early Popes and bishops had no thought of exercising any such power: the Fathers were all in favour of obedience, even to apostates such as Julian, who was obeyed by Valentinian,[3] except in matters relating to the heathen superstition: they excommunicated princes and authorities, but never so much as thought of deposing them.[4] (3) The system of indirect power brings with it the direct, for which it serves as a mask. All cases would become subject to the Pope, primarily, indeed, heresy and idolatry; but from the eleventh century simony was called heresy, and covetousness also is idolatry (Eph. v. 5); incapacity was likewise made a reason for deposition. The rule which held good for princes must also hold good for individuals; and all temporal matters without distinction must be subject to the Pope, since it is easy to make out that any temporal matter has connection with the spiritual end of man.[5] (4) The consequences of this doctrine are such as to disturb the peace of princes and people, to put an end to security in the administration of justice, and even to endanger the life of the ruler; since if a deposed ruler desired to regain his kingdom by force, his murder would be considered allowable.[6]

[1] Bossuet, op. cit. l. i. sect. 2, c. i. seq. p. 122 seq.

[2] Ib. c. vi. p. 130 seq.

[3] Theodoret, H. E. iii. 16, p. 136, ed. Cantabr.

[4] Bossuet, l.c. c. xxvi. seq. p. 161; l. ii. c. i. seq. p. 183 seq.

[5] Ib. l. i. sect. 1, c. ii. pp. 87-90. Cf. Huber, p. 55; Bluntschli, p. 79.

[6] Bossuet, l.c. p. 90; c. iii. pp. 91, 92; c. vi. p. 95.

§ 13.

To these arguments the following replies have been made: (1) The sovereignty even of heathen princes may be lawful,[1] and as such even Christians are bound to render it obedience in all things not contrary to conscience.[2] Civil authority is, within its own domain, independent, and may exist without the Christian religion, but never on so true and firm a basis as is given to it by Christianity.[3] The power bestowed by Christ upon the Apostles includes that of feeding the flock, and the power of the keys, under which head must be reckoned the right of excommunication, and the loosing of oaths injurious to salvation.[4] (2) It by no means follows that because at a certain time no use was made of a power, therefore the power was not in existence. The Church may have had many reasons for not proceeding against apostates such as Julian: in the first place, the impossibility of effecting any good, and the danger of increasing the evil,[5] for Julian was in full possession of power; then again the short period of his reign, and the at least apparent justice shown by him in the beginning; the fact also that Julian did not himself pass and publicly enforce laws directly contrary to Christianity; that he did not compel its abjuration, and that he did not make the profession of Christianity, but pretended crimes, the pretext of his frequent barbarity.[6] Moreover, Christianity had not as yet penetrated so deeply into the life of society as to have affected the whole of civil legislation. Where censures would fail of their effect—the amendment of the offender—and would even be the cause of evils still greater, it would seem mere prudence to abstain from the most severe punishments, and rather to suffer the existing evil.[7] (3) Between the two systems, that of direct and that of indirect power, there is the widest distinction: the first gives to the Pope *a real sovereignty* in temporal matters; the second imparts to his spiritual power in certain cases only a decisive influence, which has certain results within the civil domain. If excommunication brought with it, as a natural consequence, the forfeiture of earthly sovereignty, the Church would have direct power in

temporal matters, and not merely indirect;[8] but for this last it suffices that the Church should act upon the subjects in such manner that loss of power to the ruler ensues;[9] as by release from the oath of allegiance, which does not of itself necessitate the withdrawal of obedience.[10] Moreover, the power of the Pope is primarily restricted to the case of crimes endangering religion, to which class belong all the known historical cases. (4) As to the consequences of the doctrine, the Pope can by no means, at his own pleasure and on every occasion, depose princes; he is able only to declare in what cases citizens are released from the oaths taken to them; for such princes as are the cause of extreme danger to religion and the salvation of souls deprive themselves of their rights by their own acts. Since judgment on these points cannot be passed by individuals or by nations, this doctrine rather serves as a safeguard to rulers and a restraint to subjects. The Pope leaves to the dethroned prince, as long as he gives prospect of amendment, the hope of regaining his kingdom; therefore, that this hope may be realised, the Church is bound to protect and defend him against his subjects.

No theologian has ever ascribed to the Pope power over the lives of princes; and permission granted for their murder is inconceivable. Bellarmine expressly says: 'It is unheard of that the murder of a prince should ever be permitted, even were he a heretic, a heathen, and a persecutor, and even were monsters to be found capable of committing such a crime.'[11]

[1] Bianchi, t. i. l. i. § 3, p. 21 seq. Mamachi, t. iv. pp. 195, 196.

[2] Bianchi, t. i. l. iii. § 4, pp. 475, 478.

[3] Mamachi, l.c. p. 196.

[4] Bianchi, t. i. l. iii. § 1, n. 2, pp. 436, 437. The meaning of the keys in Scripture is proved by texts such as Isaias xxii. 21, 22, Apoc. i. 18, iii. 7, and by the numerous passages of the Fathers cited by Bennettis. Vindic. t. i. p. 49, to which may be added many classical passages (Passaglia, de Praerogat. B. Petri, Ratisb. 1851, l. ii. c. viii. p. 486). Even Protestant synods often rest their rules and prohibitions on the binding and loosing power; this was expressed by the Synod of Alain in 1620 in its formula of excommunication: 'Nous ministres de la parole de l'Evangile de Jésus-Chr., que Dieu a armés d'armes spirituelles, puissantes de par Dieu a la destruction des fortesses qui s'opposent contre lui, auxquelles le Fils éternel de Dieu a donné la puissance de lier et de délier sur la terre, déclarant que ce que nous aurons lié sur la terre sera lié dans le

ciel, voulant nettoir la maison de Dieu,' &c. (Actes ecclés. et civ. de tous les Synodes nationaux de l'Eglise réformée de France, ii. 181, 182. Cf. i. 160, 176).

[5] This held good also in the case of the Arian emperors. Cf. Bingham, Orig. et Ant. Chr. l. xvi. c. iii. § 6.

[6] Bianchi, t. i. l. iii. § 9, p. 549 seq.; t. iii. l. i. c. i. § 4, n. 6, p. 41 seq. Mamachi, l.c. pp. 202-204. Cf. S. Thom. 2, 2, q. 12, a. 2, ad 1.

[7] Aug. c. Parmen. iii. 2, Lib. ad Donat. post collat. c. xx.; quoted also by Kober, Kirchenbann, pp. 114-116.

[8] Bianchi, t. i. l. iii. § 1, n. 7, p. 446.

[9] Joh. de Parisiis, tract. de Potest. Papali et Regali, c. xii.: 'Si esset (princeps) haereticus et incorrigibilis et contemptor ecclesiasticae censurae, *posset Papa aliquid facere in populo, unde privaretur* ille saeculari honore *et deponeretur* a populo, et haec faceret Papa in crimine ecclesiastico, cujus cognitio ad ipsum pertinet, excommunicando scil. omnes qui ei ut domino obedirent, et sic populus ipsum deponeret et Papa per accidens.'

[10] Bianchi, t. i. l. i. § 10, n. 4, p. 97, on the passage of Joh. de Paris quoted above.

[11] Ep. ad Blackwellum, presb.

§ 14.

Even those Jesuits who are said to have boldly developed this doctrine to its uttermost consequences[1] have defended the indirect power alone. Louis Molina discusses the question whether Christ, as man, was temporal king and lord of the whole earth,[2] and lays down the following propositions: (1) The Pope has no temporal power of jurisdiction of such kind as to make him lord of the whole earth; the kingly power is altogether distinct from that of the Pope, and in their own sphere kings are independent.[3] Hence, in the ordinary course of things, it does not belong to the Pope to appoint or to depose kings; the Pope has not power directly to decide purely temporal disputes between princes.[4] (2) Although the Pope has general jurisdiction over the temporal goods of the Church, still he is not lord over them, but administrator and director, and may not therefore dispose of them at will, but only on prudent grounds for the benefit of the Church.[5] (3) To the spiritual power of the Pope, bestowed for the supernatural end, is united the highest and most extensive power of temporal jurisdiction[6] over all princes and other subjects of the Church, *in so far as is required by the supernatural end,* for which the spiritual power was ordained.

Hence the Pope can, if it be required by the supernatural end, depose princes and deprive them of their kingdoms.[7] He can also decide between them in temporal concerns, invalidate their laws, and amongst Christians order all things, not anyhow, but in the way recognised according to wise judgment as absolutely necessary[8] to the general spiritual welfare, and may enforce his commands not merely by censures, but also by public punishments and by force of arms, like any other temporal prince; although it is for the most part more suitable for the Pope to do this not of himself, but through temporal princes. In this sense is the Pope said to have both swords and both powers, the spiritual and the temporal. This doctrine was based on the ordinary grounds.[9] Again and again was it pointed out that the Pope, as a rule, was to make use of the spiritual power alone, and only where this proved insufficient, or where there was danger in delay—thus only in extraordinary cases—was he to draw the temporal sword.[10]

[1] Huber, p. 42.

[2] Molina, de Justitia et Jure, tract. 2, disput. 28, t. i. p. 34 seq. ed. Antwerp, 1615.

[3] L.c. n. 17: 'Non eo modo reges pendent a potestate S. Pontificis, quo episcopi constituti per diversa loca, quos et creare et amovere potest tamquam supremus in spiritualibus Ecclesiae pastor ac moderator, tametsi sine rationabili causa eos amovere non debeat. Neque item pendent ab eo perinde ac optimates regni pendent a rege ac perinde atque reges vel alii principes ab imperatore non exempti ab eo pendent, esto ab imperatore amoveri nequeant. Quin potius tam reges ab imperatore exempti quam imperator ipse supremae sunt potestates in temporalibus a nullo alio dependentes.'

[4] N. 19-21. Proofs from Alexander III., Innocent III., St. Bernard (pp. 405 seq. 409).

[5] N. 22, pp. 60, 61.

[6] N. 23: 'Supremam et amplissimam potestatem jurisdictionis temporalis.' It is afterwards observed that this power, 'cum non ad temporalia ipsa, sed ad supernaturalem finem ordinetur,' is not mere 'temporalis,' but 'spiritualis ex parte finis,' and should therefore be called not temporal but ecclesiastical power, '*jurisdictionis tamen temporalis*,' in order to distinguish it from the purely spiritual, to which it is annexed.

[7] N. 28. Molina here appeals to Sotus and Victoria.

[8] Huber translates 'necessaria' by suitable, pp. 42, 43, and omits altogether 'non utcumque, sed simpliciter.' The 'simpliciter necessarium' is repeatedly and expressly taught by Molina, n. 24. The kingly power is 'quoad finem suam naturalem in se spectatum independens a summo

Pontifice.' The Pope may not intervene in their government 'quatenus praecise respicit finem reipublicae politicum et naturalem,' but only 'eatenus quatenus deviat ab eo, quod finis supernaturalis *omnino* postulat.'

[9] N. 24. Cf. n. 37, p. 63, ad 2: 'Potestates laicas omnino subjici in temporalibus S. Pontifici, quantum *necesse est* ad finem supernaturalem. *Eatenus* nempe respublica temporalis subordinatur reipublicae spirituali Ecclesiae et *in ea quasi includitur; secundum se* autem respublica temporalis integra quaedam respublica in se est, cujus potestas summa est princeps temporalis.' N. 24-27, pp. 61, 62.

[10] Ib. n. 33, according to Victoria and Sotus, whom Molina follows throughout.

§ 15.

The same is taught by Salmeron, who opposes the direct power, defends the indirect, and, like Molina, appeals to Dominicans, such as Turrecremata, Victoria, and Soto.[1] Anthony Santarelli defended the indirect power alone, although in a more emphatic form;[2] the other religious orders,[3] the secular clergy, and the jurists, maintained the same doctrine;[4] it was, moreover, defended by the Sorbonne. It was only on the 8th of May 1663, after many intrigues on the part of the parliament and the court,[5] that a declaration[6] was passed to the effect that the Pope has no authority in the temporal concerns of kings, and that subjects could in no case be dispensed from the allegiance due to the king. This was based upon former royal edicts, sentences of the parliament,[7] and declarations of the Sorbonne,[8] which, however, merely declared the independence of the French crown; and this had been before acknowledged even by the Popes. Shortly after the Declaration of March 19, 1682, on June 10, 1683, the Inquisition of Toledo,[9] in opposition to it, condemned as erroneous and schismatical the proposition: 'The Pope or the Church have neither direct nor indirect power in the temporal concerns of kings, and these cannot be deprived of their dominions; nor can their subjects, upon whatsoever ground, be pronounced free from their oath of allegiance.' The Dominican Carena pronounced even impious and heretical the opinion of the Calvinists and the Magdeburg Centuriators, who denied to the Pope any power, direct or indirect, in matters temporal.[10] As this was a question of a doctrine universally defended in the schools,[11] the Jesuits, especially in

their delicate relations towards the Dominicans, could not, without the gravest reasons, have taken a different view; moreover, they followed always the common teaching of the schools.[12]

[1] Opp. t. iv. P. iii. tract. 4, in Matt. c. xvi. p. 410, ed. Colon. 1610 seq. After saying that the Pope in certain cases has to instruct and admonish princes, he continues: 'Cui Pontificis praecepto tamquam Christi verbo habent principes obedire et si resistant, potest eos tamquam contumaces punire et si in Ecclesiam et Christi gloriam aliquid moliantur, potest eos tanquam contumaces punire et regno privare vel eorum ditiones alteri principi tradere et eorum subditos ab obedientia illis debita et juramento facto absolvere.' He then cites Jer. i. 10, and brings forward the proofs against the 'potestas directa,' and for the 'indirecta.' Herr Huber quotes him as saying that 'the Pope may order the execution of a prince;' but where is the sentence to be found? Until the passage is accurately given, and proof of its genuineness produced, it must be rejected as a misrepresentation.

[2] Tract. de Haeresi. Roccab. iv. 462. The Paris theologians censured the passage: 'Summum Pontificem posse poenis temporalibus punire reges et principes, eosque deponere et suis regnis privare ob crimen haeresis, eorumque subditos ab illorum obedientia liberare, eamque semper in Ecclesia fuisse consuetudinem, et propter alias causas, ut pro delictis, si expedit, si principes sint negligentes, propter insufficientiam et inutilitatem suarum personarum. . . . Pontificem jus et potestatem in spiritualia simul et omnia temporalia habere, et in eo esse de jure divino, utramque potestatem,' &c.

[3] Amongst the Dominicans, François d'Enghien in Louvain opposed Natalis Alexander, and the theologians of the other religious orders in the place were on his side—Auctoritas Sedis Apostolicae in reges . . . . adversus P. Natalem Alexandrum. Against this Natalis wrote, H. E. saec. 15 et 16, a dissertatio apologetica, t. xviii. pp. 304-401, ed. Bing.

[4] Alphons. Alvarez Guerrerus, J.C., de Jure ac Potest. Rom. Pontif. Imper. Regum ac Episcoporum, Colon. Agripp. 1586, c. xvi. p. 108: 'Habet (Rom. Pontifex) potestatem in temporalibus ex consequenti, et hoc proprio jure, sc. quantum necessarium est ad conservationem rerum spiritualium, ad directionem hominum in salutem aeternam, ad correctionem peccatorum, et ad conservandam pacem in populo Christiano.'

[5] Cf. Recherches historiques sur l'Assemblée du Clergé de France de 1682, par Charles Gérin, Paris, 1869.

[6] In Latin in D'Argentré, Collect. Judiciorum, t. iii. P. i. p. 90; in French in Dupin, Manuel du Droit public ecclésiastique Français, Paris, 1847, p. 103.

[7] Thus upon that of Dec. 2, 1561; Jan. 4, 1549; Jan. 7 and 20, 1595; of 1610 (May 27 and Nov. 26); July 27, 1614.

[8] Of 1413, 1561, 1595, 1610, 1611, 1620.

[9] Bianchi, l.c. § 15, n. 2, p. 126.

[10] Carena, de Offic. S. Inquisit. P. i. tit. 1, de Potestate Summi Pontif.

in Tempor. § 5: 'Prima sententia est impia et haeretica.' Thus Alphonsus Ciaconius, in Vita Leonis III. says: 'Si quis neget Romani Praesulis auctoritatem in imperium, plane impius et infidelis et rerum ecclesiasticarum plane rudis esse convincetur.' The defenders of the direct power likewise considered it heretical to dispute the primacy of the Pope 'super spiritualia et temporalia.' Augustin. Triumph. Procem. Lib de Pot. Eccles.; Durandus, Ep. Meldensis, de Orig. Jurisdiction. in fine; Petrus Bertrandi, de Orig. et Usu Jurisdict. q. 8; passages in Bianchi, l.c. n. 1, pp. 122-124.

[11] To contradict the 'concors scholae sententia' is 'temerarium, haeresi proximum.' Thus Melchior Canus, de Loc. Theol. l. viii. c. iv. concl. 2; Sfondrat, Regale Sacerdot. l. i. § 17.

[12] Suarez, de Fide, disput. 20, sect. 3, n. 1, 26. Gregor. de Valentia, t. iii. disp. 1, q. 12, punct. 2, pp. 568 seq. 575 seq.

(*c*) *The system of the directing power* (*potestas directiva*).

§ 16.

Other theologians, as a modification of the theories described, taught that the Church has only a directing power (a guiding but not a constraining power) over civil authorities; that is to say, it is her right and her duty, by doctrinal decisions, by warnings, declarations, counsels, and commands, to enlighten the consciences of princes and people; to remind them of their duty towards God and religion, to instruct them as to the scope and limit of their duties, and in case of a collision of duties to pass judgment as to what is to be done to satisfy God and conscience. Therefore she must be the judge of human laws which contradict the divine law, she must strive for their improvement when dangerous to salvation, satisfy inquiries in cases of conscience, and when her voice is unheeded she must defend herself to the utmost against the evils arising from this neglect.[1]

Numerous early examples were brought forward in support of this view: *e.g.* the conduct of the great Pope Gregory I., who endeavoured to obtain from the Emperor Mauricius the withdrawal of a law injurious to the interests of religion.[2] Gregory approved the first clause of the said law (of 592), by which active State officials were not to undertake ecclesiastical offices; the second clause, by which these same officials were not to become monks, he desired so far modified as that they

should be obliged first to render account of their service, and in general to fulfil all former obligations; the third clause, by which all military persons were entirely prohibited from taking holy orders, he rejected, as closing to many the way of salvation.[3]

Looking at it from this same point of view, Bossuet also considered the much-discussed reply of Pope Zacharias as to the accession of Pipin in the light of a counsel given by the Pope, and not a command.[4]

[1] Fénélon, Dissert. de Auctoritate Summi Pontificis (Œuvr. t. ii. ed. Vers. 1820), espec. c. xxvii. xxxix. In detail Gosselin, Le Pouvoir du Pape au Moyen Age, Louvain, 1845, vol. ii. (German ed. Münster, 1859). Gosselin tries even to show, p. 335 seq., that Bossuet adopted this doctrine in the main; and he quotes also in its favour De Maistre, the Lyons theologian Van Gils (died 1834), Möhler (Symbolik, 6th ed. p. 392), Receveur (Hist. de l'Eglise, t. v. p. 127), and others.

[2] S. Greg. Vita Recens Adornata, l. ii. c. x. Fleury, l.c. t. viii. l. xxxv. n. 31.

[3] Greg. M. l. iii. Ep. 65, 66 (vol. ii. 2, 62, 65). Jaffé, n. 903, 904.

[4] Bossuet, l.c. c. xxxiii. p. 246, ed. Mogunt, 1788.

§ 17.

In accordance with the expression of Gerson and Fénélon, this power has been called a directing or guiding power (potestas directiva et ordinativa);[1] but it is a matter of dispute whether Gerson's directing power is not the same as that called by others indirect power. Gerson teaches that the Church is so to restrain her power within limits as to acknowledge also the independence of the civil power, so long as the civil power is not by an abuse made the means of attacking the faith, blaspheming God, and openly oppressing the power of the Church; should such be the case, it becomes the duty of the Church to guide and direct the civil power.[2] But has anything essentially different been maintained by the supporters of the indirect power? Have they placed other limits to the independence of civil authority? and is not this a question rather of words than of things? the word may be better chosen, but the thing is essentially the same. There is, however, a distinction between Gerson and Fénélon: Gerson speaks of a superiority, a dom*i*-

nion, of the spiritual power, in case of abuse of the civil power; Fénélon allows only a directing power, consisting mainly in instruction and counsel. The question remains, how far this last power may go, and what are its limits. These limits are determined by Fénélon and Gosselin chiefly according to prevailing public law and according to special legal titles, which were frequently united with ecclesiastical titles in the person of the Pope; consequently the exercise of this directing power must necessarily differ at different times, and regard must be had to contemporary circumstances and legal relations; its expression and its consequences will differ, while its fundamental principle—supremacy in all questions affecting religion—necessarily remains ever the same. The Head of the Church will ever have the right of judging whether, and how far, religion is injured by this or that civil law; thus the principle remains, though the form in which it is carried out may vary with the times.[3]

[1] Fénélon, Diss. Cit. c. xxvii. p. 334: 'Haec autem potestas, quam Gersonius *directivam et ordinativam* nuncupat, in eo tantum consistit, quod Papa utpote princeps pastorum, utpote praecipuus in majoribus moralis disciplinae causis Ecclesiae director et doctor, de servando fidelitates sacramento populum consulentem edocere teneatur. De cetero nihil est quod pontifices regibus imperare velint, nisi ex speciali titulo aut possessione aliqua particulari id sibi juris in aliquem regem feudatarium Sedis Apostolicae adepti fuerint.'

[2] Gerson, de Potest. Eccles. consider. 12, Op. ii. pp. 246-248, ed. 1706: 'Potestas ecclesiastica non ita habet dominia et jura terreni simul et coelestis imperii, quod possit *ad libitum suum* de bonis clericorum, et multo minus laicorum, disponere, *quamvis concedi debeat*, quod habet in eis *dominium regitivum*, *directivum*, *regulativum*, et *ordinativum*. . . . Postremo suis se terminis ita potestas ecclesiastica coerceat, ut meminerit, potestatem saecularem etiam apud infideles sua habere propria jura, suas leges, sua judicia, de quibus occupare se ecclesiastica potestas non praesumat, *nisi dum redundat abusus* saecularis potestatis *in impugnationem fidei et blasphemiam creatoris et in manifestam potestatis ecclesiasticae injuriam; tunc enim ecclesiastica potestas habet dominium quodam regitivum, directivum, regulativum et ordinativum.*' Cf. Schwab, Gerson, pp. 734, 735, P. iv. Serm. de Pace et Unit. Graec. Consid. v. t. ii. p. 147: 'Omnes homines, principes et alii, subjectionem habent ad Papam, *in quantum* eorum jurisdictionibus, temporalitate et dominio *abuti vellent contra legem divinam, naturalem*, et potest superioritas illa nominari *potestas directiva et ordinativa potius quam civilis et juridica.*' Cf. Schwab, p. 261.

[3] Bianchi, l. iii. § 1, n. 1, pp. 435, 436.

§ 18.

In principle the doctrines of the indirect and of the directing power do not in all points differ widely.[1] Let us consider them under Bellarmine's three heads. (1) In respect to persons (quoad personas): it is universally admitted that the Head of the Church may admonish and correct princes guilty of crime, and, with a view to their amendment, may lay them under censures. As to the deposing of princes *in extreme cases*, the defenders of indirect power, far from making the doctrine that princes might be deposed stand and fall with their general theory, do not even make this doctrine a necessary and abiding expression of the indirect power; while the defenders of the directive power limit deposition to the one case where the public law of the country in question authorises it; in such a case both theories agree that the Pope can declare the right of governing to have been forfeited. According to the teaching of both parties it belongs to the Pope, under certain conditions, to declare non-binding the oath of allegiance, and this in virtue of the rights of the Church, since he is the supreme guide of consciences within her. On this point, however, a controversy exists as to whether the condition of belonging to the Catholic Church, which in the Middle Ages was attached to the election and accession of the sovereign, rested, as the defenders of the indirect power believe, upon the natural law, or only upon the positive human law, as is held by Fénélon and the upholders of the directing power.[2] It would follow from the first of these opinions, that at the present time the deposition of such princes would be justified, even though not absolutely commanded; according to the second, the right of deposing would cease when not sanctioned by the public law of the land in question. Theologians have not yet come to an agreement upon this disputed question.[3]

(2) In respect to laws (quoad leges): surely in common fairness the Church has at all times the right of declaring any given State law injurious to the interests under her charge; precisely as the civil power may declare the same of a law of

the Church. As a matter of fact, and as we now experience, the State not only makes this declaration without real cause, but proceeds to measures grievously injurious to the Church. When civil laws are such as to endanger salvation, the Pope, as Head of the Catholic Church, has without doubt the right to declare them to be such, to denounce them emphatically; and if denunciation be fruitless, to proscribe them as powerless to bind the conscience; he is indeed as much bound in duty to this as were the Apostles and first bishops to prohibit the faithful from taking part in the serving of idols, and from obeying those commands of the State which they could not fulfil without betraying God. However hard it may from circumstances become for the Pope, he is still bound by the sanctity of his office to condemn whatsoever is contrary to the faith and morals of the Church, and to declare with apostolic freedom that the Church, far from justifying such laws, is ever bound to reject them.

(3) In respect to sentences (quoad judicia): the Church's right of judgment is inseparably united with her right of legislation. The same power which enables her to pass laws within her own domain enables her also to apply them, and to watch over their application. When a question comes before her judgment-seat which has relation to the supernatural end under her charge, she has full power to pass judgment; and temporal matters also fall under her control, *when and in so far as* they relate to the fulfilment of her great charge. Here again the words of Cardinal Antonelli apply: 'The Church has received from God the sublime charge of guiding men, whether as individuals or united in societies, to a supernatural end; thence comes her power and her obligation of passing judgment upon all matters, whether inward or outward, in their relation to the natural and divine laws. But since every action, whether commanded by a higher power, or proceeding from the freedom of the individual, is necessarily invested with this character of morality and justice, it follows that the judgment of the Church, as it is *directly* concerned with the morality of the action, extends also *indirectly* to all things with which this morality is bound up. But the Church does not therefore directly interfere in political

matters, which by the ordinance established by God, and by the teaching of the Church herself, come within the domain of the civil power, and are completely independent of any other authority.'[4]

[1] Many even of Bellarmine's most ardent opposers agree to the directing power. Even Caron, Remonstr. Hibernorum, P. ii. c. viii. pp. 81, 82, allows the weight of the words used by Hugh of St. Victor and Alexander of Hales: 'Sicut spiritus constitutus est ad dirigendum corpus, ita spiritualis potestas constituta est ad dirigendam terrenam;' and only asks whether 'dirigere' goes so far as 'deponere.' He then observes: 'Thomas Waldensis (Doctrin. Fid. l. ii. a. 3, c. lxxviii.) expresse docet, idem esse vinculum reges ad coronam, quod mariti ad uxorem, h.e. juris utrinque divini inseparabilem unionem, adeoque sicut sacerdos vinculum matrimonii solvere nequit, sed tantum dijudicare, si teneat nec ne, *sic de potestate terrena summus sacerdos habet de illa judicare, si recta sit*, judicare, inquam, non praejudicare.'

[2] Cf. Gosselin, ii. pp. 447, 448.

[3] But the second, as will later be seen, is to be maintained as the right opinion.

[4] Card. Antonelli to the Nuncio Chigi, March 19, 1870.

§ 19.

If, indeed, Stahl were in the right when he wrote that one or the other must be the case: either the Pope must have indirect power in temporal matters, or princes must have indirect power in spiritual matters: there is no third alternative[1] (which, however, many would by no means allow[2])—the question may fairly be asked: Which is most supported by Christian and historical principles, which is most profitable to the free development and the highest interests of mankind: the indirect or directing power in matters temporal maintained by the earlier theologians, or else the direct or indirect power of the State in ecclesiastical matters defended by the later legists and regalists? In the present day only one case of practical importance can occur, that of a contradiction between a positive civil law and a law of the Church. In our day laws are often passed by party intrigue, hastily, intended to last only a short time, with corrupt aims, and often with the sacrifice of general to individual interests; thus in many cases the mediæval saying might be applied, by which laws were likened to the behaviour of Anacharsis with the cobweb.[3] Is it not plain that the legisla-

tion of the Church, based as it is upon high principles, is far superior, and that it might easily become her duty to encounter these modern laws with the words, 'This is unlawful for thee to do,' or 'Non possumus'? Or is the Church indeed at one time to approve the French laws of 1789, at another time those of 1793, then the Code Napoléon, then the Prussian Landrecht, and then again the Swiss Federal Constitution as at present revised?[4] In so doing she would cease to be herself, she would destroy her very being, she would no longer be the Bride of the Lord. But the State, which is only negatively bound to demand from the faithful nothing contrary to conscience, and which has moreover in almost all lands guaranteed liberty of conscience, would contradict itself should it disallow this right of the Church. If in watching lest the State suffer injury (ne quid detrimenta respublica capiat) civil rulers consider themselves entitled to pass judgment on the laws of the Church, and to subject them to their Placet, they cannot deny that the rulers of the Church are in the same way bound to watch lest any injury be done to souls; and that although they may on their side oppose no Placet[5] to that of the civil power, it is nevertheless the right and the duty of the Church rulers to declare that such and such a State law is contrary to the conscience of Catholics. Can it be that at the very moment in which a dogma of the Church is declared to be dangerous to States, the right of the Church is to be called in question of at any time declaring on her side a law of the State to be dangerous to the conscience of the faithful?

[1] Stahl, Rechtsgutachten, p. 69, quoted by Phillips, Kirchenrecht, ii. § 115, p. 618, n. 21.

[2] Rintel, Der Protestantismus als polit. Princip. p. 113 seq.

[3] Joh. Saresbur. Enthetic. p. 997, Quod leges civiles comparantur aranearum telis:

Retia solvuntur leviter, quae texit arachne,
Arte tamen mira fila coire facit;
Impediunt eadem muscarum corpora parva,
Magnaque si veniunt, quolibet ire sinunt;
Sic Anacharsis ait, cohibent civilia jura
Invalidos, magnis quolibet ire licet.
Non ita lex aeterna potens torquere potentes
Atque fovens humiles, quos videt esse pios.

[4] Even the ancients rejected the definition of law which said: 'Jus esse, quod ei, qui plus potest utile est.' Aug. de Civ. Dei, xix. c. xxi. n. 1, ex Cic. de Republ.

[5] Such was thought of by the Portuguese Oliva, M. Schenkl, George Wanner, and others; while many writers acknowledge that in this matter the Church should have reciprocal rights. Cf. Henner, Die Kirchliche Frage in Bayern, 1854, p. 40.

ESSAY XIV.

ORIGIN OF THE CIVIL POWER AND THE RIGHT OF RESISTING IT.

WHAT is the origin of State authority? From what source do kings derive their right? Have the people the right to overthrow them? These are questions of great antiquity, which have been discussed a thousand times, and are still discussed from various points of view. Opinions are now, as in old times, greatly divided on the subject. A glance at the various works elicited by the discussion shows that the same views have often been both held and opposed by Catholics and Protestants.

A number of charges have been raised on this question against Jesuits and against mediæval writers, and have been made use of to cast suspicion upon the Church. Let us examine these charges.

PART I. ORIGIN OF THE CIVIL POWER.

§ 1. Gregory VII. and Innocent III. § 2. Civil power derived from God. § 3. Whether mediately or immediately? § 4. Authority to be distinguished from the holder of the authority. § 5. Doctrine of the sovereignty of the people as held by theologians. § 6. Not originated by Jesuits. § 7. Inadequacy of the doctrine. § 8. It holds the mean between absolute despotism and the modern sovereignty of the people.

§ 1.

Many mediæval writers, and especially Popes Gregory VII. and Innocent III., are charged with having taught that civil power had its origin in evil, and that royal authority rose from human violence. But Gregory VII. and Innocent III., like other writers, are not treating of the authority itself, but of its tyrannical exercise. They follow the early Fathers, who lay

down that by nature all men are equal, having no dominion over other men but only over animals (Gen. i. 26); that dominion over man was established by the justice of God as a consequence of sin;[1] that Nimrod, the man of violence, was the first king[2] (Gen. x. 8); that the old monarchies were nearly all founded on force,[3] and that the origin of the Jewish kingdom was connected with a revolt against God[4] (1 Kings viii. 7). Gerson considers sin to have been the efficient cause of the establishment of an authority to govern and punish.[5] Theologians say that without sin there had been no need of coercive or penal authority.

[1] Aug. de Civ. Dei, xix. 15: 'Rationalem factum ad imaginem suam voluit (Deus hominem) nisi irrationabilibus *dominari* non hominem homini, sed hominem pecori. . . . Prima ergo *servitutis* causa *peccatum* est, ut homo homini conditionis vinculo subjiceretur, quod non fit nisi Deo judicante.' Cf. l. iii. 14, 15; iv. 4-7; v. 12; xvi. 17 seq.; xviii. 2; de Doctr. Christ. l. i. (expressly cited apud Greg. VII. l. viii. Ep. 21, p. 598). Greg. M. Regul. Pastor. P. ii. c. vi. l. xxi. Moral. in Job, c. xv. seq. n. 21, 22.

[2] Aug. de Civ. Dei, xvi. 3, 4. Cf. Iren. l. v. c. xxiv. n. 2 init.

[3] Aug. l.c. xviii. 2. Sulpic. Sever. Chron. l. ii. c. iii. seq. Cf. Turrecremata, Sum. de Eccl. l. i. c. xc. n. 2.

[4] Greg. M. in l. i. Reg. l. iv. c. iv. v. n. 4, 38. (The Jews desired a king with the tyrannical authority of the heathen kings: Bianchi, t. iii. l. i. c. i. § 11, pp. 103-107.) Aug. de Civ. Dei, xvii. 6. Theodoret, q. 14, in l. i. Reg. Phillips, K.R. ii. § 94, p. 367.

[5] Gerson, Serm. ad Reg. Franc. pro Justitia (Opp. iv. 648): 'Causa efficiens (dominationis et coercitivi dominii) fuit peccatum, causa finalis fuit pax, tranquillitas et sufficientia in vita civili.'

§ 2.

But nevertheless theologians and the Fathers always maintain that civil power is of God,[1] and they all appeal in behalf of this opinion to the clear testimony of Scripture (Rom. xiii. 1 seq.; Wisdom viii. 15; Prov. vi. 3; Dan. iv. 14, v. 21; Jer. xxvii. 3). Innocent III., in spite of his remarks upon the origin of the Jewish kingdom,[2] nevertheless always regarded royal authority as bestowed by God.[3] Gregory VII. acknowledged it in letters to Henry IV.[4] Authority in general is not denied to have a divine origin because individual rulers are not held to have received their authority immediately from God;[5] but apart from this there is a very clear distinction between these two propositions: (1) 'Kings and dukes are descended from those who with pride,

robbery, and perfidy usurped a despotic authority;' and (2) 'the origin of civil authority and its foundation is not of God but of Satan,' as some heretics taught.[6] Gregory VII., following the Fathers, uttered the former proposition in private letters, without any intention of imposing it as a doctrine or prescribing its acceptance; he not only did not utter the latter proposition, but distinctly stated the contrary. The former is an historical assertion founded on Bible history;[7] the latter, a theological error which the Church has at all times rejected.

[1] Aug. de Civ. Dei, v. 1: 'Prorsus divina providentia regna constituuntur humana;' c. xi.: '(Deus) nullo modo credendus est regna hominum eorumque dominationes et servitutes a suae providentiae legibus alienas esse voluisse.' Cf. c. xxi. iv. 5; Confess. iii. 8; Leo M. Ep. 43, ad Marcian. Aug.: 'Christum, qui regni vestri, est *auctor* et rector.' Cf. Joh. Saresb. l.c.; Gerson, l.c.

[2] Migne, ccxvi. 1073 seq. With reference to 1 Kings, chap. viii. he said of the Jewish people that their kingdom arose *per extorsionem humanam;* and later, p. 1074, *ad petitionem humanam extortum.*

[3] L. vii. Ep. 212, p. 527: 'Ut gladium, quem *Dominus* tibi tradidit, a quo est omnis potestas, non videaris sine causa portare (Rom. xiii. 4), oportet, ut apprehensis armis et scuto causam Dei alleges,' &c.

[4] Greg. VII. l. ii. Ep. 31, ad Henric.: 'Quem *Deus* in summo rerum posuit culmine.' Cf. l. iii. Ep. 7; l. vii. Ep. 21, 23, 25.

[5] Bianchi, t. i. l. i. § 1, 2, p. 5 seq. Phillips, l.c. § 103, p. 457 seq.

[6] Iren. v. 24, n. 2, 3. Aug. de Natura Boni adv. Manich. c. xxxii. Opp. viii. 509, ed. Maur. Bianchi, l.c. n. 11-13, pp. 13-16, § 3, n. 1, 2, pp. 21, 23. Mamachi, t. iv. p. 61.

[7] Upon 1 Kings viii. 7, theologians observe: God did not renounce His right of supreme ruler of the Jewish people—this is inconceivable—but He deprived them of the special care He had formerly bestowed upon them. An abandonment on the part of God refers not to His power but to His favour. In contempt of His saints God sees Himself contemned, as in honour paid to them He is honoured: Cypr. Ep. 59, ad Cornel. ed. Vet.; Cyrill. Alex. l. x. in Joh. c. xxxvi. Moreover, it was a sin to desire a king like the heathen kings, whose tyrannical government was denounced by the prophet: Bianchi, t. iii. l. i. § 11, p. 108 seq.

§ 3.

It would be hard to find a Catholic theologian who has opposed the doctrine that sovereignty is of God. The only vexed question is whether it is of God immediately, or mediately through human agency—the choice or consent of the people.[1] Both views have met with numerous supporters amongst Catho-

lics and also amongst Protestants.[2] Those who support the opinion that royal authority only comes from God mediately appeal to the testimony of the ancients,[3] and the history of the peoples and empires of antiquity,[4] from which they learn the lesson reason also teaches, that our natural wants as well as the necessity of order and self-preservation have led and must lead men to form societies, and invest one or more persons with the social authority. To prove that authority comes immediately from God, it should be shown that God alone can confer it. Now Saul and David are the only kings of whom it can be said that God directly appointed them. Further, the doctrine of the immediate divine appointment of kings leaves unexplained the origin of the authority possessed by an aristocracy or a democracy; it makes any change in the form of the constitution an offence against God, and directly favours despotism.[5] Holy Scripture proves the divine origin of authority, but not that it comes immediately from God; St. Paul (Rom. xiii. 1 seq.) speaks not merely of the supreme civil authority, but of any authority, including many subordinate offices of human appointment, for instance Pilate (John xix. 11).

[1] Bianchi, t. i. l. i. § 1, n. 1 seq. p. 5 seq. Mamachi, t. iv. l. iv. c. ii. § 2, p. 57 seq.

[2] Supporters of the immediate divine appointment of kings are found principally in France and Germany, amongst whom may be named the author of the work de Modis Uniendi Ecclesiam, c. 1410 (Gerson, Opp. ii. 179 seq.); Petrus de Marca, Concord. Sacerd. et Imp. l. ii. c. ii. n. 1 seq. ed. Francof. 1708; Victor, Relect. de Pot. Civ. n. 8, ap. P. de Marca, l.c.; Caron, Remonstrantia Hibernorum, P. ii. c. iii. § 1; Dupin, de Ant. Eccl. Discipl. diss. 7, c. ii. § 1; Pierre Nicole, de l'Unité de l'Eglise, l. iii. ch. x. p. 399; Renat Choppin, de Sacra Politia, l. i. tit. 7, § 9, p. 135 seq. ed. 1609; St. Baluz. not. ad. Ep. 8; Lupi Ferrar.; Joh. Frid. Hornius, de Civ. l. ii. c. i. Francof. 1672; J. Ad. Osiander, Observat. in Grot. l. i. c. ccclxvii. p. 478. Also the tract of the unknown Benedictine, de Finibus utriusque Potestatis, Ratisb. 1781, c. iv. p 80 seq.

In opposition to these are numerous advocates of the merely mediate divine appointment. Thus Bellarm. de Laicis, l. iii. c. vi., who in this follows earlier authors like Durandus, tract. de Jurisdict. Eccles., and Jacob Almainus, who, de Auctor. Eccl. et Conc. Gener. (Gerson, Opp. ii. 977, 978, ed. Antwerp), says: 'Nam, ut dicunt Doctores, . . non est intelligendum, quod auctoritatis regis saecularis sit a Deo sic, quod eam *immediate* commiserit alicui regulariter, sed quia secundum rectam rationem, quam Deus hominibus indidit, est alicui commissa. Et non videtur, a quo sit

principi collata, nisi ab ipsa communitate.' The same doctrine is taught by Dominicus Soto, l. i. q. 1, art. 3; Ledesma, P. ii. q. 18, art. 3; Covarruvias, in Pract. c. i.; Suarez, de Leg. l. iii. c. iii.; Defens. Fid. Cath. l. iii. c. ii.; the Theologi Salmanticenses of the Carmelite order, particularly Antony of St. Joseph, Compend. Salmantic. Romae, 1779, tract. 3, de Legibus, cap. ii. punct. 1, inq. 2; Billuart, Theol. Moral. tract. de Legibus, art. 4; Charlas, tract. de Libert. Eccl. Gallic. l. iv. c. iv. p. 165, ed. 1684; Roncaglia, in Natal. Alex. H. E. saec. 13 et 14, c. ix. a. 5, t. xv. p. 519 seq.; Bianchi, l.c. p. 6 seq.; Mamachi, t. iv. pp. 59, 60, 66; Zallinger, Inst. Jur. Natur. § 204. Amongst Protestants who take this view are Grotius, de Jure Belli et Pacis, i. 4, § 7, n. 3, Paris, 1625 (cf. Leo, Universalgesch. iv. pp. 155-157); Sam. Pufendorf, de Jure Naturae et Gentium, l. vii. c. iii.; J. Barbeyrac, note in h.l.; Noodt, Buddeus, and others.

[2] Cic. de Off. ii. 12: 'Mihi quidem non apud Medos solum, ut ait Herodotus, sed etiam apud majores nostros justitiae fruendae causa videntur olim bene morati reges constituti. . . . Nam cum premeretur inops multitudo ab iis, qui majores opes habebant, ad unum aliquem confugiebant virtute praestantem, qui cum prohiberet injuria tenniores, aequitate constituenda summos cum infimis pari jure retinebat.' De Leg. iii. 2: 'Omnes antiquae gentes quondam regibus paruerunt, quod genus imperii ad homines justissimos et sapientissimos deferebatur.'

[4] See many examples apud Bianchi, l.c. n. 4, p. 7.

[5] Bianchi, l.c. n. 10, p. 12.

§ 4.

The origin of the power must properly be distinguished from the bearer of the power, the power itself from the person holding it. All are agreed that authority comes from God; but not its concrete form, nor him who holds it. St. John Chrysostom[1] compares it with marriage: marriage is of God. Man and wife are united by God (Proverbs xix. 14) because God has instituted marriage, not because He unites individually all who marry. Authority in general is in its essence of God;[2] particular forms of government are left to man's pleasure.[3] Man is destined by nature to live in society,[4] and society requires a ruler who shall insure to it order, unity, and peace.[5] This is part of the natural law which is divine law; authority, therefore, comes from God.[6] Many theologians teach that this authority is communicated by God to the people, that it rests immediately with the people, and that they can transfer it to one or more persons.[7]

[1] Chrys. hom 23, in Rom. n. 1 (Migne, lx. 615). Likewise Joh. Dam. in h.l. (ib. xcv. p. 545). St. Thomas, in Ep. ad Rom. c. xiii.: 'Omnis potestas a Deo est, sed potestas ipsa, at non potentes.'

[2] Ægid. Rom. in l. ii. d. 44, q. 1, a. 2; q. 2. a. 2: 'a Deo . . . generaliter et in quantum ordo est.'

[3] Bossuet, l.c. p. 126: 'Civile imperium generatim tantum traditum est et hominum arbitrio forma relicta, sive illa monarchica, sive aristocratica sive popularis foret.'

[4] Aristot. Polit. i. 1, § 9, p. 483, ed. Paris, 1848: ἄνθρωπος φύσει πολιτικὸν ζῷον. Cf. also Balmez, Catholicity and Protestantism, Eng. trans. chap. xlix. p. 238 seq.; Cic. de Republ. i. 25 (Lact. Inst. vi. 10; Aug. Ep. 138, n. 10).

[5] De Reg. Princip. l. i. c. ii. Alvar. Pelag. de Planctu Eccl. l. i. c. xxxvi. f. 152 seq. Cf. Card. Gerdil, Diss. de Principatu Civili (Nouv. Opuscules du Card. Gerdil, Rome, 1852, p. 16 seq.).

[6] Bellarmine, l.c.: 'Praeterea haec potestas est de jure naturae; non enim pendet ex consensione hominum, nam velint, nolint, debent regi ab aliquo, nisi velint perire humanum genus, quod est contra naturae inclinationem. At jus naturae est jus divinum; jure igitur divino introducta est gubernatio, et hoc videtur proprie velle Apostolus, cum dicit Rom. xiii.: Qui potestati resistit, Dei ordinationi resistit.'

[7] Bell. l.c. Suarez, de Leg. iii. 4. Concina, l.c. In England during the reign of Charles I, Henry Bane (The People's Case Stated; cf. Ranke. Hist. Eng. iii. 162) taught that it depended upon the people whether and under what conditions they should transfer the authority to individuals.

§ 5.

Earlier theologians base the proposition, that political authority rests originally and directly with the people — the community—firstly upon reason. For, they say, this authority is of divine law; but divine law having conferred it upon no individual, it must have been conferred upon the community; also, that supposing positive law to be abolished, there is no reason, since all men are equal, why one more than another should invest himself with authority, which, therefore, must belong to the entire people. Again, because human society must be a perfect society, it must have the right of self-preservation and of punishing disturbers of the public peace.[1] The proposition was based, in the second place, upon many passages of Roman law concerning the transference of the power of the people to rulers.[2] Thirdly, upon passages from classical writers, especially Aristotle and Cicero.[3] Fourthly, upon the historical testimony of ancient states and nations.[4] Lastly, upon the concurrence of previous writers. This doctrine approved itself to the monarchs of the sixteenth century, whose

thrones gained much security from the downfall of the feudal lords and the development of the democratic element, at that time entirely harmless. The people were a support to them against the attacks of a turbulent and powerful aristocracy, long unwilling to submit to the position assigned to them of mere courtiers; for until the monarchy had become an all-devouring despotism, the people could more confide in the moderation and sense of justice of the king than of the nobles.

[1] Bellarmine, l.c.: 'Secundo nota, hanc potestatem immediate esse tanquam in subjecto in tota multitudine. Nam haec potestas est de jure divino; at jus divinum nulli homini particulari dedit hanc potestatem, ergo dedit multitudini. Praeterea sublato jure positivo non est major ratio, cur ex multis aequalibus unus potius quam alius dominetur; igitur potestas est totius multitudinis. Denique humana societas debet esse perfecta respublica; ergo debet habere potestatem se ipsam conservandi et proinde puniendi perturbatores pacis,' &c. Cf. Almain. l.c.: 'Communitas confert principi auctoritatem occidendi eos, quorum vita in perniciem reipublicae cedit. Ergo illa auctoritas est per prius in communitate, cum nemo alteri det, quod non habet. Et antecedens notum est, cum princeps a se auctoritatem illam non habeat, nec eam habet a Deo, saltem ut in pluribus.'

[2] L. ii. Dig. i. 2, de Orig. Juris; l. ii. ib. tit. 4, de Constit. Princ.: 'Quod principi placuit, legis habet vigorem, utpote cum lege regia, quae de imperio ejus lata est, *populus ei et in eum omne suum imperium et potestatem conferat.*' Inst. i. 2, § 6. Cf. Bianchi, t. iii. l. i. c. i. § 8, n. 5, pp. 9, 10; t. i. l. i. p. 8 seq. Mamachi, l.c. p. 61.

[3] Cic. de Rep. i. c. xxvi. seq. c. xxxiv. seq. Aristot. Polit. iii. 6.

[4] Bellarm. l.c. § Quarto nota, refers to Roman history: 'Et si causa legitime adsit, potest multitudo mutare regimen in aristocratiam aut democratiam et e contrario, ut Romae factum legimus.'

§ 6.

This doctrine has often been ascribed exclusively to Jesuits, and Cardinal Bellarmine has been described as the inventor of the theory of the sovereignty of the people in the sense of Rousseau and similar writers.[1] But all acquainted with literature know that the doctrine held by Bellarmine and the Jesuits did not differ from that of other schools and orders, nor from the doctrine of the earlier schoolmen, and that it was essentially different from modern revolutionary theories. F. Walter[2] points out that Bellarmine, and theologians who agree with him, derive political power from God,[3] whereas modern theories ascribe it

entirely to man. The former hold it to be imparted by God to man, the latter consider it to come from man's agreement and creation; according to the former it is transferred to those in authority of necessity by virtue of the divine and natural law,[4] whilst the latter make the transfer a purely voluntary arrangement made by virtue of a contract. These theologians are far from holding the opinions of the Contrat Social,[5] neither do they accept the theory that man in his primitive condition roamed about like the animals, until some sage prevailed upon him to live a social life.[6] The doctrine of these theologians, that the people having once conferred authority have not the right to retract it when they like, makes a further distinction between them and the advocates of the modern theories of the sovereignty of the people.

[1] Stahl, Der Protest. als polit. Princip. Berlin, 1853, p. 24 seq. Ranke, Päpste, ii. 184 seq. Trendelenburg, Naturrecht, § 154, note. Cf. Huber, p. 42.

[2] Walter, Naturrecht und Politik, § 252, p. 228, with note.

[3] Suarez, Def. iii. 1, 6: 'Principem politicum potestatem a Deo recipere, quod etiam absolute *de fide* est.'

[4] Bellarm. l.c.: 'Tertio nota, hanc potestatem transferri a multitudine in unum vel plures *eodem jure naturae*. Nam respublica non potest per se ipsam exercere hanc potestatem, ergo tenetur eam transferre in aliquem unum vel aliquos paucos, et hoc modo potestas principum in genere considerata est etiam de jure naturae et divino: nec posset genus humanum, etiamsi totum simul conveniret, contrarium statuere, nimirum ut nulli essent principes vel rectores.'

[5] Various expressions on this subject may indeed be quoted from Fathers and theologians, for example Aug. (Confess. iii. 8): '*generale* quippe *pactum* est societatis humanae obedire regibus suis.' But a *generale pactum* is here something quite different from Rousseau's contract ('pactum vinculum naturale est, stipulatio vero civilis est obligatio,' says Petr. Bles. Ep. 70, p. 218, in accordance with Roman law). St. Augustine elsewhere (de Civ. Dei, l. xix. c. xii. n. 2) says: 'Homo fertur quodammodo naturae suae legibus ad ineundam societatem;' and Pius VI. in a Brief of the 10th March 1791, to Cardinal de la Rochefoucault, says truly: 'Qua propter haec potestas non tam a "sociali contractu," quam ab ipso Deo recti justique auctore repetenda est.' Ranke is an example of how our modern historians, even those who summarily condemn former Catholic men of learning, are far from having reached a firm conclusion on this subject. In his History of England, vol. i. p. 75, he says: 'Whether political relations amongst mankind have in general their origin in a contract is a question for speculative politicians, to whom we may leave its solution.' Against Rousseau's theory, vide Taparelli, Naturrecht, 1840, § 557-585; Walter, l.c. p. 62; Balmez, chap. l. (vol. iii. p. 57 seq.); Gerdil, l.c. pp. 19-23.

[e] Bellarm. l.c. c. v. Gerdil, l.c. pp. 17, 18.

[f] Petavius, de Eccl. Hierarch. l. iii. c. xiv. p. 88, ed. Paris: 'Quod in omnibus imperiis ac regnis usuvenisse putant, qui de rebus publicis scripserunt, ut jus et potestas omnis a natura ipsi communitati conveniat, quae eam postea vel in plures magistratus ac rectores partiatur vel integram in unum aliquem transferat, pro eo ac plurium vel unius regimen elegerit, ex quo civilium per gentes et populos administrationum sunt orta discrimina. . . . Porro ubi jus auctoritatemque, quam habebat, in eum quem elegit principem transtulit, *non eam penes se retinet nec revocare amplius potest.*' Also Valentinian's address to the soldiers (Theod. H. E. iv. 5): 'Vestrum fuit milites, cum imperator nullus esset, imperii habenas mihi tradere; nunc postquam imperium ego suscepi, meum est de cetero, non vestrum, de publicis negotiis deliberare.'

§ 7.

The germ, at least, of the State undoubtedly existed in the family in primeval times;[1] the family of the first-born may have been treated with most consideration, but could scarcely have maintained its preëminence everywhere and always.[2] Imagine a considerable number of families, equal in every way and quite unconnected, cast by a storm upon a desert island, their vessels wrecked, and themselves without any hope of reaching the land they had left or the shores for which they were bound, entirely cut off from the society of other men; these families could certainly not live upon this island without some government, and yet no one there would have more claim than another to any authority; but they certainly have the right to institute a government that appears to them necessary and suitable. Thus this multitude, represented by the heads of families or otherwise, possesses the right of civil power, and the privilege of conferring it upon one or more according to circumstances. It will not be easy for any one successfully to oppose Bellarmine's doctrine on this point.[3] It applies also when a ruling family becomes extinct; when both *de facto* and *de jure* claimants of a throne are wanting, where nothing has previously been done to meet such a case, and where no one has any special rights. The difficulty in the concrete is the obscurity which veils the early formation of States.[4] Many governments may have arisen in usurpation, but have become legitimate when they

attained stability and received the consent of the people.[5] There are undoubted cases in which the ruling prince derives his commission to exercise authority through a transfer from the people and through their consent. The theory fails, however, when it is carried too far. It must not be used as a universal rule to be applied always and in all cases.[6] Legitimacy may be original or acquired; it may spring from various legal titles, such as election, succession, and others.[7]

[1] Walter, Naturrecht, § 49, p. 59.

[2] It is impossible in a large empire where there are many nationalities. Balmes, chap. xlviii.

[3] Balmes, chap. xlix. We must observe that this doctrine, although *in abstracto* recognising the universal equality of men, does not do so *in concreto*. Cf. Civiltà Cattolica, Dec. 1, 1855.

[4] 'The origin of forms of government, like the origin of States, belongs to a period when, as far as we are concerned, all is darkness; we only know of their changes and their development. When in a nation the supreme power has been transmitted without change of form, and in unbroken succession, or where the changes of form have been effected by the coöperation or with the consent of the possessor of the power, then the government resulting from the change is in the fullest sense legitimate.' Walter, l.c. §248, p. 220.

[5] Ib. § 250, p. 222 seq. Bellarmine, l.c.: 'Adde, saepissime regna esse justa et injusta, a Deo et non a Deo; nam ex parte ipsorum occupantium et invadentium regna sunt latrocinia et injusta, et proinde non a Deo, tamen ex parte divinae providentiae, quae utitur mala intentione hominum et illam ordinat vel ad peccata punienda vel remuneranda bona opera vel ad alios bonos fines, regna illa sunt justa et legitima.'

[6] Walter, § 252, p. 227.

[7] Petrus de Alliaco ap. Almain. de Potest. Eccl. et Laica, q. 2, c. i. § Quantum ad haec. Bianchi, t. i. l.c. n. 8, 9, pp. 11, 12.

§ 8.

This old theological doctrine may be imperfect and defective, but it is far superior to many later theories. It holds, to a certain extent, the mean between the doctrine of an absolute monarchy by divine right—which may impose any yoke upon the people, and treat the country as a private possession[1]—and the doctrine of the sovereignty of the people, which allows them at any moment to transform the constitution and overthrow the monarchy.[2] This old doctrine teaches, not merely that authority

in the abstract and in general is instituted by God, but that in the concrete and *in particulari* it comes from Him, though mediately.[3] This doctrine lays no claim to be regarded as a dogma, and openly confesses that revelation is silent on the subject.[4] As Balmez justly observes, there are two questions: (1) The divine origin of political authority; (2) the mode in which God imparts it. 'The first is a point of doctrine. No Catholic can entertain any doubt upon it. The second is open to discussion, and various opinions may be formed upon it without interfering with faith.'[5] The question is analogous to many other legal questions. To respect the right of property, for example, is commanded by the natural and divine law; it is inculcated by the Church, and required by the State; but as to the component parts of property, as to the rights of individual owners, as to acquisition and transfer of property, as to the necessary limitations of the right of property, these are questions appertaining to civil law, with which the Church has no concern.

[1] Theologians teach that public authority can never be *dominium proprietatis*. They refer to Seneca (de Benef. vii. 5: 'Omnia rex imperio possidet, singuli dominio;' c. iv.: 'Ad reges potestas omnium pertinet, ad singulos proprietas') and other classical writers, to the distinction between 'proprietas' (dominium) and 'possessio' (l. xii. Dig. xli. 2; l. i. Dig. xliii. 17; Aristot. Rhetor. i. 5) to the nature of things and to reason. Cf. Gerson, Opp. iv. 598; Schwab, p. 42; Grotius, de Jure Belli, l. ii. c. vi. n. 7-9. To the same effect are the passages in the Old Testament concerning the Jewish kings who arbitrarily disposed of the life and property of their subjects.

[2] Fichte even declared that the people could never be rebels, but were rather the source and foundation of all other power (Grundlage des Naturrechts, Th. i. § 16, Werke, iii. 182).

[3] Bellarm. l.c. Quinto nota: 'Ex dictis sequi, hanc potestatem *in particulari* esse quidem a Deo, sed mediante consilio et electione humana, ut alia omnia, quae ad jus gentium pertinent. Jus enim gentium est qua si conclusio deducta ex jure naturae per humanum discursum. Ex quo colliguntur duae differentiae inter potestatem ecclesiasticam et politicam,' &c. Cf. Rintel, pp. 57-59. Vide likewise Suarez, de Leg. iii. 3: 'In hac re communis sententia videtur esse, hanc *potestatem* dari *immediate a Deo ut auctore naturae*, ita ut homines quasi disponant *materiam* et efficiant subjectum capax hujus potestatis; Deus autem quasi tribuat *formam dando* hanc potestatem.' He quotes Cajetan, Covarruvias, Victoria, and Soto.

[4] Suarez, Defens. l. iii. c. ii.: 'Sed quamquam controversia haec ad fidei dogmata directe non pertineat (nihil enim ex divina Scriptura aut

Patrum traditione in illa definitum ostendi potest), nihilominus diligentur tractanda et explicanda est.'

[5] Balmez, chap. l.

Part II. The Right of Resistance against the Civil Power.

§ 1. Duty of obedience. Right of resisting tyranny in general. § 2. John of Salisbury. § 3. St. Thomas Aquinas. § 4. Proceedings in the fifteenth century. § 5, 6, 7. Protestant theories and practice. § 8. Absolute obedience. § 9. Two currents in Protestantism. § 10, 11. Catholic League in France. § 12. Must Catholics not rather suffer death than offer opposition? § 13. The Jesuits. § 14. Mariana. § 15. Suarez. § 16. Gregory of Valentia. § 17. Molina and other Jesuits. § 18, 19. Complaints against the Jesuits.

§ 1.

As a general rule it was maintained that the teaching of Holy Scripture and of the Fathers[1] inculcated upon subjects the duty of obedience towards all authority, good or bad, Christian or heathen, and that neither the personal wickedness of the ruler[2] nor his profession of a false religion exempted them from this duty. It was no less unanimously maintained, that when a ruler abused his authority by commanding anything plainly incompatible with the divine or natural law, or with justice, or with the constitution, *passive* resistance is not merely a right, but, when divine or moral law is in question, a duty. No one should make himself in such cases the accomplice of a wrong, and disobedience violates no right appertaining to the prince; for he has encroached upon a domain in which he has no authority and beyond the limits of his proper sphere. Where there is no right to command there can be no duty to obey.[3] But it was a disputed point whether *active* resistance, carried to the length of deposition, expulsion, or death, might, in extreme cases, be lawfully employed against a legitimate prince who governed unjustly. At an early period it was pretty generally held that there were cases in which subjects might withdraw their obedience from a ruler so far as actively to resist him; namely, when he entirely misused his authority, was tyrannical and oppressive, and when the self-preservation of the people required it. The ancients said that when self-preservation was

in question all the bonds of society were loosed, paternal authority ceased, as well as the authority of the husband over his wife, of the master over his servant: the authority of the prince followed the same course.[4] They looked upon the tyrant as an enemy of the law and of the people, who forfeited, therefore, his authority.[5] A tyrant with them was not merely one who usurped the government unlawfully.[6] A lawful ruler also was a tyrant if he governed unjustly, oppressed his subjects, and led to the ruin of the commonwealth,[7] but especially if he used his power to oppress citizens for his private advantage.[8] The question was discussed in the schools of who possessed the right, and under what conditions, of rebelling against a tyrant, whether usurping or legitimate, and depriving him of his power to do ill. The majority of theologians did not concede the right to private persons, but reserved it to the whole people, who were often regarded as the real holders of the sovereign power,[9] and to them only when all endeavours had been exhausted. They considered that in such cases the verdict of reason and natural law made it allowable to offer forcible resistance, as an extreme measure, for defence and protection against public oppression.[10] This doctrine has been often and violently attacked, but has seldom been made the subject of study in its true meaning, and in relation to the circumstances of the time.[11] Let us hear on the subject some learned men of the Middle Ages, who all start from the principle that the rights of the king are not more holy and inviolable than those of the humblest subject, except so far as they are intended for the protection of the rights of all others.[12]

[1] Vide Tertull. adv. Scapul.; Origen, l. ix. in Rom. n. 25 seq.; Chrys. hom. 23, in Rom. c. xiii.; Aug. de Civ. Dei, v. 21, de Natura Boni, c. Manich.; Catech. Rom. l. iii. de Quarto Praecepto, c. iii.

[2] Vide also Tacit. Hist. iv. 74: 'Quomodo sterilitatem aut nimios imbres et cetera naturae mala, ita luxum et avaritiam dominantium tolerate;' l. vii.: 'Bonos imperatores voto expetendos, qualescunque tolerandos.' Seneca, in Trag.: 'Aequum et iniquum regis imperium feras.' Sophocles: ἀλλ' ἐν πόλει στήσει, τοῦδε χρὴ κλύειν καὶ σμικρὰ καὶ δίκαια καὶ τἀναντία. Bianchi, t. i. l. i. § 3, n. 3, p. 23.

[3] Walter, Naturrecht und Politik, § 358, p. 327 seq. Cf. Martini, Lehrbuch des Staatsrechts, 1799, § 380; Dahlmann, Politik, § 202. Quite similar is the teaching of St. Anselm. Cant. Com. in Ep. ad Rom. c. xiii.; S. Thomas, Sum. 1, 2, q. 96, a. 4; Suarez, de Leg. l. iii. c. x.; Petrus

Bles. Ep. 131, p. 388. Aug. de Verb. Dom. sermo 6 (al. 62, n. 12, Opp. v. 362): 'Si quid proconsul jubeat et aliud imperator, numquid dubitatur illo contemto isti esse serviendum? Ergo si aliud imperator, aliud Deus jubeat, contemto illo obtemperandum est Deo.' Thus Acts v. 29. Mamachi, p. 68 seq., gives many older examples.

[4] Vide passages apud Bianchi, l.c. § 4, pp. 24-29.

[5] Hugo Grotius, l.c. n. 11: 'Consistere enim non possunt voluntas imperandi et voluntas perdendi; quare qui se hostem totius populi profitetur, in eo ipso abdicat regnum.' Cf. Barclay, l. iv. c. xvi. According to the ancients a tyrant was the enemy of the law and of the people. Cic. de Offic. iii. 19, 32, de Republ. i. 42: 'Quum rex injustus esse coeperunt perit illud illico genus, et est idem ille *tyrannus*, deterrimum genus et finitimum optimo.' L. ii. c. xxvi.: 'Simulac enim se inflexit hic rex (Tarquinius Superbus) in dominatum injustiorem, fit continuo *tyrannus*, quo neque tetrius neque foedius nec Diis hominibusque invisius animal ullum cogitari potest, qui, quamquam figura est hominis, morum tamen immanitate vastissimas vincit belluas. Quis enim hominem rite dixerit, qui sibi cum suis civibus, qui denique cum omni hominum genere nullam juris communionem, nullam humanitatis societatem velit?' Philipp. ii.: 'Omnes *boni*, quantum in ipsis fuit, Caesarem occiderunt. Aliis consilium, aliis animus, aliis occasio defuit, voluntas nemini.' Cf. Sueton. in Nerone, c. xlix.; Arist. Polit. l. v. c. x. xi. The king, on the contrary, was regarded as the father and benefactor of the people. Cic. de Rep. ii. 26: 'Hic est enim dominus populi, quem Graeci *tyrannum* vocant; nam *regem* illum volunt esse, qui consulit ut parens populo, conservatque eos, quibus est praepositus, quam optima in conditione vivendi.'

[6] This is the usual meaning. Cf. Schwab, Gerson, pp. 615, 616.

[7] A theologian of the fifteenth century says (Gerson, Opp. v. 367): '*Proprie* tyrannus est, quicunque reipublicae oppressor potentatu regali et monarchica potentia abutitur despotice absque superiore repressore, sive talis habeat vel usurpet titulum monarchici principatus sive non.'

[8] Aristot. Polit vii. 14, makes a distinction between power exercised for the benefit of the rulers and that exercised for the benefit of the governed. The former he calls despotic, the latter of the free. He does not regard every government as a despotism (c. iii.). Tacit. Ann. l. xii. represents the Emperor Claudius as admonishing the King of the Parthians to have in his mind 'non dominationem et servos, sed rectorem et cives.' The same idea made Augustus not wish to be called 'dominus' (Sueton. in Oct. Aug. c. liii.). Gregory I. l. xiii. Ep. 31, thus states the difference between pagan kings and the Roman emperor: 'Quod reges gentium domini servorum sunt, imperatores vero reipublicae domini liberorum' (Bianchi, t. iii. l. i. c. i. § 8, n. 3, 4, pp. 80-82). Ægidius Colonna, de Reg. Princ. l. iii. P. ii. c. ii. defines the tyrant, 'per civilem potentiam opprimens alios propter bonum privatum.' Thus Gerson, Opp. iv. 598-600. Bossuet, Politique tirée des propres Paroles de l'Ecriture sainte, Paris, 1709, l. iii. a. 8, prop. 5: 'Le vrai caractère du prince est de pourvoir aux besoins du peuple, comme celui du tyran est de ne songer qu'à lui-même.'

The two significations of the word 'tyrant' were not always clearly distinguished, and thus the idea of tyrant was sometimes wider and some-

times more restricted. The word often appears in Scripture: Job xxxiv. 19; Dan. iii. 3; Wis. xvi. 4; also in the Fathers. Observe the words of Cicero, de Rep. i. 33: 'Cur enim *regem* appellem Jovis Optimi nomine *hominem dominandi cupidum aut imperii singularis, populo oppresso dominantem*, non *tyrannum* potius?' ii. 27: 'Hoc nomen (tyranni) Graeci *regis injusti* esse voluerunt.' Many distinguish the 'tyrannus secundum regimen et titulum' and the 'tyrannus secundum regimen tantum,' or the 'tyrannus quoad dominium et potestatem' and the 'tyrannus solum quoad regimen.' Cajetan, in Sum. 2, 2, q. 42, a. 2: 'Quis sit autem modus ordinatus perturbandi tyrannum et qualem tyrannum, puta *secundum regimen tantum* vel *secundum regimen et titulum*, non est praesentis intentionis; sat est nunc, quod ut utrumque tyrannum licet ordinate perturbare absque seditione quandoque, illum ut bono reipublicae vacet, istum ut expellatur.' Suarez, disp. 13, de Bello, sect. 8.

[9] Many modern writers, such as J. H. Fichte (System der Ethik, ii. § 145), accept a twofold sovereignty, that of the people and of kings.

[10] Cf. Haller (Restauration der St. Wissensch. Pt. ii. ch. 41). Upon this and Bluntschli and Dahlmann, cf. Walter, l.c. § 326, p. 335.

[11] Balmez, l.c. chaps. liv-lvi.

[12] In this sense writes Rintel against Stahl, p. 21: 'According to the conservative principle, not merely the right of the ruling one or many, but the whole mass of rights within the State are Dei gratiâ—the expression of God's will. The smallest right of the lowest subject is in and through God as holy as the right of the king to his throne, and if the king violates the lowly right of his subject, the moral guilt, the breach of the divine law, the outrage against God, is no less than if the subject rise up against the king. (Compare the case of Achab, 3 Kings xxi. 1-25.) The right of the king is superior to that of the subject only in being the right to protect and defend all other rights; but it is in no way the one sacred right in the State, and the only one coming from God.' The notion of 'divine right' as exclusively confined to kings is an invention of the time of the Reformation, especially of Henry VIII., who made his divine right a justification for the most crying tyranny.

§ 2.

John of Salisbury[1] says tyranny is above all things an abuse of the power conferred by God.[2] According to him, tyranny is not merely a public crime; it is, if possible, more than this. 'The man who does not pursue a public enemy fails in duty towards himself and towards the whole human commonwealth.' 'The prince defends the laws and liberty of the people. The tyrant in every way sets the laws at naught, and seeks to bring the people into servitude.' 'The prince should be honoured and loved; often the tyrant should even be put to death.'[3] But he does not dispute that tyrants are servants of God, inasmuch

as they chastise the sins of the people.[4] He says further: 'The will of the ruler depends upon the will of God, and causes no injury to liberty; but the will of the tyrant serves greed, and in opposition to law—which fosters liberty—seeks to lay the yoke of servitude upon his fellow-servants.'[5] Gedeon, he says further, is the model of a good ruler; for, although the deliverer of his people, he desired not his own government, but the government of God.[6] The tyrant is typified by Antiochus, who tore and burnt the books of the divine law, and raged against his subjects.[7] The history of Julius Cæsar and other pagan emperors illustrates the right of putting tyrants to death, in case no other remedy remains for preventing the continuance of tyranny.[8] The same thing, he says, is shown by the history of the Jews, especially the books of Judges and of Judith;[9] but with the limitation that no one should aim at or strive for the downfall of one to whom he is bound by honour and oath, neither should poison be employed, and everything should be done without injury to religion or honesty.[10] Laws appear to be presupposed which permit tyrants to be put to death; poisoning is inadmissible, on the ground that no law permits it.[11] Still, he thinks, pointing out the lamentable end of all tyrants, like Pharao, Achab, Sennacherib, Nabuchodonosor, Julian the Apostate, and others,[12] that the best and safest way of overcoming tyrants is for the oppressed to turn to God, and having purged themselves from sin to pray to Him for succour; for the sins of the people are the tyrant's mainstay.[13]

[1] Polycrat. l. iii. c. xv. (Migne, cxcix. p. 512 seq.): 'Unde et in saecularibus literis cautum est, quia aliter cum amico, aliter vivendum est cum tyranno. Amico utique adulari non licet, sed aures tyranni mulcere licitum est. Ei namque licet adulari, quam *licet occidere*. Porro tyrannum occidere non modo licitum est, sed aequum et justum.'

[2] C. xviii. p. 786: 'Est enim tyrannis a Deo concessae homini potestatis abusus.'

[3] C. xvii. p. 778: 'Imago Deitatis princeps amandus (vide Aug. Quaest. 5, et N. Testamenti, q. 35), venerandus est et colendus; tyrannus pravitatis imago plerumque etiam occidendus.'

[4] C. xviii. p. 785.

[5] C. xxii. p. 807.

[6] Ib.: 'Defertur honor dominii et recusat; legi tamen subjicit, quos a

jugo servitutis absolvit. Patri filiorum successurus defertur honor; at ille Deum maluit honorari.'

[7] Ibid. p. 808.

[8] C. xviii. p. 788: 'Ex quibus facile patebit, quia semper tyranno licuit adulari, licuit eum decipere, et honestum fuit occidere, si tamen aliter coerceri non poterat;' c. xix. p. 792: 'Et haec quidem est descriptio tyranni, qua explicatur res quae latet in nomine. Sicut ergo damnatum hostem licet occidere, sic tyrannum.' Ib. c. xx. p. 793, he refers to his earlier work, de Exitu Tyrannorum.

[9] C. xx. pp. 794-797.

[10] P. 796: 'Hoc tamen cavendum doceat historiae, ne quis illius moliatur interitum, cui fidei aut sacramenti religione tenetur astrictus. Sed *nec* veneni, licet videam ab infidelibus aliquando usurpatam, *ullo unquam jure* indultam lego licentiam. Non quod tyrannos de medio tollendos non credam, sed *sine religionis honestatisque dispendio.*' The chapter, p. 793, bears the title, 'Quod auctoritate divinae paginae licitum et gloriosum est publicos tyrannos occidere, si tamen fidelitate non sit tyranno obnoxius interfector aut alias justitiam aut honestatem non amittat.'

[11] Gosselin, ii. p. 441, note.

[12] C. xxi. p. 797 seq.

[13] P. 796 (after referring to David's conduct in regard to Saul, his persecutor): 'Et hic quidem modus delendi tyrannos utilissimus est et tutissimus, si qui premuntur ad patrocinium clementiae Dei humiliati confugiant et puras manus levantes ad Dominum devotis precibus flagellum, quo affliguntur, avertant. Peccata etenim delinquentium vires sunt tyrannorum.'

§ 3.

St. Thomas Aquinas says that a tyrannical government is not a legitimate government, therefore a rising against it has not the character of a rebellion, except when its overthrow would work more harm to the nation than its continuance;[1] the tyrant is, properly speaking, to be regarded as a rebel. If the tyranny be not immoderate, the saint recommends endurance as the best expedient,[2] for it cannot last for ever,[3] and its removal may often occasion greater evils than its existence.[4] Thus the question is limited to a despotism so extreme as to be insupportable. But even in this case the right to rebel does not, he says, belong to private individuals.[5] Before any measures are taken against tyrants, the verdict of the country to that effect should have been publicly expressed, and the various cases carefully discriminated. Tyranny can be proceeded against only when the public judgment of the entire society has been given.[6] Wherever the

people have the right to elect their king, it cannot be unlawful for them to depose him if he is false to the obligations he entered into; or they may restrict his power for the time to come, as we see in Roman history.[7] When the right of appointing a governor appertains to some higher authority (for example, in vassal States), it is to this higher authority that an oppressed people should turn for relief, as the Jews applied to the emperor against Archelaus the son of Herod.[8] If all human succour is wanting against the tyrant, then recourse, he says, should be had to God, the King of kings, who might convert or displace him; prayer would be efficacious if sin, the source of all evils in the people, were removed.[9]

[1] Summa, 2, 2, q. 42, a. 2 ad 3: 'Regimen tyrannicum non est justum, quia non ordinatur ad bonum commune, sed ad bonum privatum regentis, ut patet per philosophum; et ideo perturbatio hujus regiminis non habet rationem seditionis nisi forte, quando sic inordinate perturbatur tyranni regimen, quod multitudo subjecta majus detrimentum patitur ex perturbatione consequenti quam ex tyranni regimine; magis autem tyrannus seditiosus est, qui in populo sibi subjecto discordias nutrit et seditiones, ut tutius dominari possit; hoc enim tyrannicum est, cum sit ordinatum ad bonum proprium praesidentis cum multitudinis nocumento;' ib. q. 69, a. 4: 'Sicut licet resistere latronibus, ita licet resistere malis principibus, nisi forte propter scandalum vitandum.'

[2] De Regimine Principum, c. vi.: 'Et quidem si non fuerit excessus tyrannidis, utilius est remissam tyrannidem tolerare ad tempus, quam contra tyrannum agendo multis implicari periculis, quae sunt graviora ipsa tyrannide.'

[3] Ib. c. x.

[4] C. vi. Example of greater tyranny in Dionysius of Syracuse.

[5] Esset autem hoc multitudini periculosum et ejus rectoribus, si privata praesumptione aliqui tentarent praesidentium necem, etiam tyrannorum. Plerumque enim hujusmodi periculis magis exponunt se mali quam boni. Malis autem solet esse grave dominium non minus regum quam tyrannorum, quia secundum sententiam Salomonis, 'Dissipat impios rex sapiens.' Magis igitur ex hujus praesumptione immineret periculum multitudini de amissione regis, quam remedium de subtractione tyranni.

[6] Videtur autem magis contra tyrannorum saevitiam non privata praesumptione aliquorum, sed auctoritate publica procedendum.

[7] The means previously pointed out for the prevention of tyranny were: (1) election of a man who appeared unlikely to become a tyrant; (2) limitations of his power so as to hinder it from easily degenerating. A restrained monarchy or mixed government was always reckoned the best. Thom. Sum. 1, 2, q. 105, a. 1. Cf. Cic. de Rep. i. 29, 45; ii. 23; Bellarm. de Rom. Pont. i. 1-4; Suarez, de Leg. iii. 4.

[8] Cf. Sum. 2, 2, q. 64, a. 3.

[9] Quod si omnino contra tyrannum auxilium humanum haberi non potest, recurrendum est ad regem omnium Deum, qui est *adjutor in opportunitatibus in tribulatione*. Ejus enim potentiae subest, ut cor tyranni crudele convertat in mansuetudinem secundum Salomonis sententiam Prov. xii.: *Cor regis in manu Dei*, &c. (examples of Assuerus and Nabuchodonosor). Tyrannos vero, quos reputat conversione indignos, potest auferre de medio vel ad infimum statum reducere, secundum illud sapientis Eccli. x. 17: *Sedes ducum superborum destruxit Deus et sedere fecit mites pro eis* (Pharao, Nabuchodonosor). Nec enim abbreviata manus ejus est, ut populum suum a tyrannis liberare non possit. . . . Sed ut hoc beneficium populus a Deo consequi mereatur, debet a peccatis cessare, quia in ultionem peccati divina permissione impii accipiunt principatum (Osee xiii. 11; Job xxxiv. 30). Tollenda est igitur culpa, ut cesset tyrannorum plaga.

§ 4.

On occasion of the murder of Duke Louis of Orleans by command of Duke John of Burgundy, the Franciscan Jean Petit, on the 8th March 1408, defended the proposition that it was lawful for a subject to kill, or to cause to be killed, a false vassal or perfidious tyrant.[1] This elicited an emphatic denial[2] of the proposition from the learned John Gerson, who cited John of Salisbury and St. Thomas Aquinas in favour of his view.[3] Petit's assertions were condemned in Paris, 1414, by the bishop and inquisitor.[4] At the 15th session of the Council of Constance[5] the following proposition was condemned: 'Any tyrant may be lawfully and meritoriously slain by any one of his vassals or subjects, even by cunning or secret ambush, without hindrance from any oath he may have taken to the said tyrant his lord, or any engagement by which he may be bound to him, and without awaiting the sentence or receiving the commission of any judge.'[6] The condemnation of a proposition like this, containing many errors, left room still for disputes on several points. Further inquiries were excited by the assertions of Wicliffe and Huss, that no one could exercise an authority or superior power who was in mortal sin, and the people might punish a sinful ruler according to their judgment.[7]

[1] Gerson, Opp. v. pp. 15-42, ed. Dupin. Schwab, Gerson, p. 430 seq. Hefele, Conc. vii. p. 176 seq.

[2] Opp. iv. pp. 657-680. Schwab, pp. 499 seq. 609 seq.

[3] Gerson had declared previously in favour of the right of resisting tyrants, and even of tyrannicide. Vide Decem Considerationes principibus et dominis utilissimae, Opp. iv. 622 seq.; Schwab, l.c. p. 426 seq.; ib. pp. 615-617.

[4] The document apud Natal. Alex. H. E. saec. 15 et 16, c. ii. a. 4, n. 3, t. xvii. p. 184 seq.

[5] Mansi, xxvii. 765. Schwab, p. 622. Hefele, p. 181.

[6] The judgment ran thus: 'Doctrinam hujusmodi erroneam esse in fide et moribus ipsamque tamquam haereticam, scandalosam, et ad fraudes, deceptiones, mendacia, proditiones, perjuria vias dantem reprobari et condemnari.'

[7] Articuli damn. 1418, n. 15, 17. Wiclef. art. 30. J. Hus. (Denzinger, Enchirid. definit. p. 187, n. 491, 493; p. 193, n. 550). In Wicliffe's time (in 1386) the English peers declared to Richard II. that if he did not, according to custom, govern by their advice, and if he estranged himself from the people, it would be their part to depose him with the consent of the people, and raise another member of the royal family to the throne. Richard was actually deposed by the Parliament, whilst earlier (in 1327) Edward II. had been forced to abdicate to insure the throne to his son. Schwab, l.c. p. 588. Ranke, Gesch. Eng. i. p. 103. Pauli, Gesch. Eng. iv. p. 636 seq.

§ 5.

Discussions on this question became still more animated after the rise of Protestantism.

In the conflicts of the Huguenots in France under Charles IX. and Henry III., in the Scotch risings after John Knox, in the revolutions in England long before the execution of Charles I., in the wars of the rebellious Netherlanders against the Spaniards, many followers of Calvin defended the proposition that the people might take up arms and expel, dethrone, or otherwise get rid of their rulers if they were bad or hostile, or threatened their religion. They preached the strictest obedience to princes who embraced the new doctrines, but armed resistance to those in authority who opposed the introduction of these doctrines.[1] The Scotch appealed to Calvin's doctrine,[2] in justification of their rebellion against Mary Stuart;[3] George Buchanan, tutor of James I., sought to justify rebellion by revolutionary theories;[4] many others have done the same.[5]

[1] Bossuet, Hist. des Variations des Eglises prot. l. iv. n. 1-3. Baudrillart, Bodin et son temps, Paris, 1853, p. 40 seq. Poynet, Bishop of Winchester under Edward VI., in his Petit Traité du Pouvoir politique,

1558, appears as one of the first 'Monarchomachi' (Barclay has the expression). Cf. Walter, l.c. § 534.

[2] Calvin, in Daniel c. vi.: 'Abdicant se potestate terreni principes, cum insurgunt contra Deum; indigni sunt, qui in numero hominum censeantur, ideoque in capita potius eorum exspuere oportet, quam illis parere.'

[3] Camden Annal. P. ii. a. 1571: 'Immo a Calvini auctoritate populares, ubique magistratus ad libidinem regum moderandam constitutos esse iisque licere malos reges carceribus coercere et regno exuere probare conati sunt.'

[4] Buchanan, de Jure Regni, p. 13: 'Populo jus est, de sceptro regis pro debito suo disponendi;' p. 62: 'Populus principem in jus capitis vocare potest.' Cf. Hist. Scot. l. vii.

[5] Goodman, Lib. de Obed. p. 25: 'Reges jus regnandi a populo habent, qui occasione data illud revocare potest.' Further on, p. 99, he says Mary of England must be put to death. Apol. pp. 14, 85: 'Mali principes juxta legem Dei deponi debent, cumque magistratus officio suo fungi detrectant, tum liberum est plebi, ac si nullum haberet magistratum, et tunc tempus illi usum gladii concedit.' John Knox, whom Calvin praises, Ep. 306, and Beza in the Icones compares with the Apostles, says in the Admonitio ad Not. et Popul. Scotiae: 'Si principes adversus Deum et veritatem ejus tyrannice se gerant, subditi eorum a juramento fidelitatis absolvantur. Illud audacter affirmaverim debuisse nobiles, rectores, judices populumque Anglicanum non solum resistere et repugnare Mariae illi Jezabel, quam vocant reginam suam, verum etiam de ea et sacerdotibus ejus et aliis omnibus, quotquot ei auxilium tulerunt, mortis supplicium sumere, ut primum coeperunt Evangelium supprimere.'

§ 6.

The work[1] (printed in Edinburgh in 1579) of Hubert Languet, a man of varied learning, was, together with other works,[2] greatly used in the Netherlands in defence of revolution. It laid down distinctly that the people were authorised to resist and punish the king, if he oppressed the true religion (Calvinism) and introduced idolatry (Catholicism). The Huguenots in France received express approval from their preachers for their wars of religion.[3] The famous preacher Jurieu, who ascribed all power to the people,[4] delivered the following doctrine in a pastoral letter as late as 1689: 'Kings are responsible to the people for the maladministration of the sovereignty intrusted to them, which can be withdrawn from them and made over to others if the public welfare and the interests of religion require it.'[5] The manifestations made here and there, and more frequently as time went on, in opposition to this doctrine and in favour of

royal authority, and later even of blind obedience,[6] took place under a different order of circumstances, when the party had suffered considerable diminution. They may in many instances be attributed to the endeavour to excite hatred against Catholic doctrines; the Calvinists, for instance, in 1614, out of respect for James I. and animosity against Rome, condemned at Tonneins the book by Suarez containing an attack upon this king.[7]

[1] Vindiciae contra tyrannos seu de principis in populum populique in principem legitima potestate, auctore Stephano Junio Brutto, 8; vide p. 318. Cf. Leo, Univ. Gesch. iv. p. 151.

[2] Cf. Hotomanni Francogallia (also Cologne, 1575), Du Droit des Magistrats sur leurs Sujets (1577; first in German, Magdeburg, 1550); De justa reipublicae christ. in reges impios auctoritate (Rose), 1590.

[3] Th. Beza, Ep. 37, 40, ap. Keller, de Regicidio, p. 80. Beza, Hist. Eccl. l. vi. Castlenau, Mémoires, l. iii. Jac. Aug. Thuanus (de Thou), Hist. sui Temporis, t. iii. l. xxx. pp. 278, 280, ed. Paris, 1606. Davila, Istor. civili di Francia, l. iv. Synodes nation. des Eglises réformées de France, t. i. p. 43 seq. Also to these belong the letters of the Nuncio Santa Croce to Cardinal Borromeo, particularly of the 13 and 17 April 1562, 23 February and 22 March 1563, concerning the schemes of the Huguenots relative to the seizing and imprisonment of the king and his counsellors. published by the Protestant Joh. Aymon Craveta (Les véritables causes des progrès et des catastrophes de la religion réformée découvertes par la production de cinquante lettres anécdotes, qui furent écrites . . . depuis l'an 1561 jusqu'à 1565). Cf. Bolsec, in Vita Calvini, c. xxi.; also the work, Avis important aux réfugiés, sur leur prochain rétour en France, Amsterdam, 1609. At Rotterdam appeared an answer called Réponse à l'avis aux réfugiés, par M. D. L. P.

[4] Jurieu (ap. Barante, Questions constitutionelles, 1849, ch. i.): 'Il faut qu'il y ait dans la société une certaine autorité, qui n'ait pas besoin d'avoir raison pour valider ces actes. Or cette autorité n'est que dans le peuple.'

[5] 'Que les rois ne sont que dépositaires de la souveraineté, qu'ils sont justiciables du peuple pour la mauvaise administration de ce dépôt, que le peuple est en droit de retirer ce dépôt, lorsque le bien public et l'interêt de la religion le veulent ainsi, et de le confier à qui bon lui semble.' Cf. Traité de l'Eglise, chap. xxi.

[6] Synodes nat. des Eglises réformées de France, t. ii. p. 106, ch. iv. xxiv. Daille said at the Synod at Loudon in 1600: 'The first and foremost article of the reformed faith is: Que les rois ont une autorité souveraine sur toutes sortes de personnes, sans excepter aucun de ses sujets . . . et qu'il n'y a pas d'autorité médiate entre la leur et celle de la toute puissance de Dieu;' the royal power was to be free of the spiritual, and no resistance to it justifiable. Pastor Ferrand declared at Alençon in 1637: 'Que l'autorité royale n'est pas d'institution humaine, que la puissance du roi vient immédiatement de la puissance de Dieu.' Cf. Bianchi, t. i. l. i. § 6, n. 1 seq.

p. 49 seq. Later appeared the work, Traité du pouvoir absolu des Souverains, pour servir d'instruction, de consolation et d'apologie aux Eglises réformées de France, qui sont affligées, Cologne, 1685.

[7] Synodes nat. des Eglises réf. de France, t. iii. p. 65.

§ 7.

David Pareus, professor in Heidelberg (died 1615), likewise conceded to the people power over a bad prince in matters of religion. James I. caused his commentary on the Epistle to the Romans to be burnt in England; but Philip, son of David Pareus, defended the doctrine as having been taught by all the Protestant theologians.[1] Hugo Grotius also taught that royal power ceased in extreme cases when it was employed to the destruction of the people.[2] Gronovius declared emphatically that a war of religion against princes was lawful.

[1] Schröckh, K.G. seit der Reform. v. pp. 271, 272. Bianchi, l.c. § 7, pp. 66, 67.

[2] Hugo Grotius, de Jure Belli et Pac. l. i. c. iv. § 1, 5, 11.

§ 8.

Absolute obedience towards the sovereign was, as time went on, more and more enforced in monarchical States: numerous refutations of the contrary doctrine were published;[1] James I. himself turned author in the cause.[2] But in 1649, Charles I. was forced to mount the scaffold, and his execution was defended by the poet Milton;[3] like that of Louis XVI. in 1793, it was justified by appealing to the supreme power of the nation.[4] 'In a certain sense,' says Henry Leo,[5] 'it is true that the development of revolutionary political theories was the necessary and inexorable consequence of the Reformation; revolutionary views gained ground in proportion as the limitations imposed by the Church upon civil authority were disregarded.' Bossuet particularly observes: 'The claims of the Pope over kings in civil affairs serve as the pretext to Protestants for preferring their own allegiance as subjects to the allegiance of Catholics. But it can be made clear as noonday that if the two opinions must be compared, the one subjecting sovereigns in civil affairs to the Popes, the other subordinating them to the people, the latter

alternative, which would submit government to the domination of fury, caprice, ignorance, and passion, is inconceivably the most to be feared. Experience has shown the truth of this view, and our age, as one of those that has abandoned sovereigns to the cruel humours of the multitude, exhibits more numerous and more tragic examples of acts of violence against the person and the authority of kings than could be found in six or seven centuries amongst people who have acknowledged on this matter the authority of Rome.'[6]

[1] W. Barclay, de Regno et Regali Potestate adv. Buchananum, Brutum, Boucherum et reliquos Monarchomachos, Paris, 1600. Against Joh. von Althusen, prof. at Herborn (Politica Methodice Digesta, Herb. 1603), Henning Arnisäus wrote the Tract. de auctoritate principum in populum semper inviolabili, Francof. 1606. Jean Bodin (de Republ. l. ii. c. v.) taught: 'Nec singulis civibus nec universis fas est, summi principis famam, vitam aut fortitudinem in discrimen vocare, seu vi seu judicio constituto id fiat.' Cf. Walter, § 534, p. 548.

[2] Triplici nodo triplex cuneus, Lond. 1608. Apologia pro juramento fidelitatis, Lond. 1609. (Lancelot Andrews, Bishop of Chichester) Tortura Torti, Lond. 1609. Cf. Werner, Suarez, i. p. 41 seq.

[3] Apologia pro populo Anglicano, Opp. Compl. ed. 1759, pp. 279, 309.

[4] Salmas. Defens. Reg. p. 375: 'Sic securim porrexerunt (Presbyteriani), quae regis cervicibus impacta est. Dici vere potest, victimam Presbyterianos ligasse, Independentes jugulasse.' For the transactions, vide Macaulay, Hist. Eng. from the Accession of James II. c. ix.

[5] Leo, Univ. Gesch. iv. p. 153.

[6] Bossuet, Défense de l'Hist. des Variations, n. 55. Artaud, Hist. des Souverains Pontifes, t. v. Paris, 1847, p. 337, after quoting from Sevelinge's Biogr. Univ. xxi. 352, where the wide spread of the doctrine of the indirect authority is attested: 'Ajoutons que des circonstances nouvelles, la profonde sagesse du Saint-Siège, les actes successifs et spontanés des Papes, depuis deux siècles, ont amené partout à cet égard pour les princes Catholiques absolument les mêmes résultats, les consuétudes et les reconnaissances les plus publiquement soutenues, et l'on en est arrivé là dans le Catholicisme sans tant de crime.'

§ 9.

There are in Protestantism two chief currents, which have done their work at different times and with varied force. Luther, at one time the bitter foe of tyranny,[1] was after the peasant war of 1525 no longer the man of the people, but preeminently the man of princes. In his 'Admonition to my beloved Germans' (1530), and in his work 'Against the Assassin in

Dresden' (Duke George of Saxony), he had endeavoured to silence scruples of conscience with regard to a war against the emperor and the empire.[2]

It was the opinion of Melanchthon, not merely that it was lawful[3] to resist a tyrant if he were grievously oppressive, and in case of necessity to put him to death, but that it were desirable a brave man could be found who should kill Henry VIII. of England.[4] Protestants, in general living under princes who had embraced the new doctrines, were extremely desirous of binding Catholics to an absolute obedience towards their rulers, but when they themselves lived under Catholic sovereigns they claimed the most complete liberty of conscience.[5] Rousseau's theories are supported on the one hand upon Grotius, Pufendorf, Thomasius, and Kant,[6] on the other hand upon Buchanan, Languet, Milton, Algernon Sydney, and Locke.[7] This is the groundwork of the French Revolution.[8] Revolution in theory and practice is not a product of the doctrine taught by Catholic theologians. Rousseau comes of a Protestant line, and his progenitors are some of the bitterest enemies of Catholicism.

[1] Sleidan, Vita Luth. l. v. p. 75. Bossuet, Hist. des Variations, l. ii.

[2] Luther's Werke, xvi. pp. 1950, 2062. Luther's Tischreden, Jena, 1603, fol. 482.

[3] Melancth. Arg. Psalm. liii. (Corp. Reform. xiii. 1125, ed. Bretschneider): 'Judicio humanae rationis verum est, concessam esse defensionem adversus tyrannum inferentem manifestam et atrocem injuriam. Et si in tali defensione tyrannus interficitur, defensor judicatur juste fecisse.'

[4] Id. Ep. ad Vit. Theod. (ib. iii. 1075): 'Anglicus tyrannus Cromwellum interfecit et conatur divortium cum Juliacensi puella. Quam vere dixit ille in Tragoedia, non gratiorem victimam Deo mactari posse quam tyrannum. Utinam alicui forti vero Deus hanc mentem inserat!'

[5] Bianchi, t. i. l. i. § 7, n. 7, p. 75. Balmez, l.c. chap. l. says: 'Protestantism, departing from the teaching of Catholicity, has been thrown alternately upon two opposite rocks: wishing to establish order, it has done so to the prejudice of true liberty; and in its desire to maintain liberty, it has become an enemy to order. From the bosom of false reform have arisen the insane doctrines, which, preaching up Christian liberty, discharged the subject from his obedience to the lawful authorities; from the bosom of the same reform has likewise arisen the theory of Hobbes, which sets up despotism in the midst of society as a monstrous idol, to which all should be sacrificed, without regard for the eternal principles of morality, with no other rule than the caprice of him who rules, with no other bounds to his power than those marked out by the extent of his

strength. Such is the necessary result of banishing from the world the authority of God. Man left to himself can only succeed in producing slavery or anarchy; the same thing under two forms—*the reign of force.*'

[6] Stahl, Gesch. der Rechtsphilosophie, iii. iii. 7, p. 241 seq. 2d ed. On Grotius, cf. ib. pp. 145, 170; Walter, l.c. § 537, p. 557.

[7] Algernon Sydney, Discourses concerning Government, London, 1698. Locke, two treatises on Government, London, 1690. On the development, vide Stahl, l.c. pp. 284-292.

[8] Stahl, l.c. p. 285. Rintel, pp. 75-80.

§ 10.

Of course no one will dispute that some Catholics also have held dangerous theories and committed grave crimes. But these are in no manner the result of Catholic principles. Machiavelli, with his immoral political theories, was an offshoot of paganism, and was always opposed by Catholic theology.[1] Paul Sarpi, who advised the Council of Ten in Venice to exterminate at any cost some party chiefs amongst the inhabitants of the mainland, and in case this proved a difficulty to employ poisoned weapons,[2] was a long way from the spirit of Catholicism, and more congenial with that of Protestantism.[3]

The wars of the League in France might be cited with more show of reason. When Henry III. at Blois in 1588 caused the assassination of the Duke of Guise and his brother the cardinal, the Catholic League, headed by the third brother, the Duke of Mayenne, declared that obedience was no longer due to the king; and the Sorbonne, in a document of the 7th January 1589, declared that the people were free from any duty towards him, and might take up arms in the cause of the endangered religion.[4] When the king, at length openly allied with the Huguenots, had been assassinated on the 1st August 1589 by Jacques Clément, the League of the Seize in Paris compared the deed with that of Judith, and wished to have the exclusion from the throne of the heretical Prince Henry of Bourbon proclaimed.[5] The parliament of Toulouse, in a decree drawn up by the jurists of the assembly, approved the bloody deed.[6] Fanaticism had become so strong in the violent struggles of the time, that it threatened to bear down all before it, and it was with difficulty that the more circumspect could preserve their peace. Still, not all

who approved revolt against a king endangering religion approved assassination, and not all who held no heretic could mount the French throne were in favour of an armed revolt.[7]

[1] Ces. Cantù, Storia Univers. l. xv. P. i. c. x. Cf. Dr. Fehr, Ueber die Entwicklung und den Einfluss der politischen Theorien, Innsbrück, 1855 (where the theories are given in some detail from Pythagoras to Augustine, but he omits all from St. Augustine to Macchiavelli); G. Frapporti, Sugli intendimenti di Nic. Macchiavelli nello scrivere il Principe, Vicenza, 1855.

[2] Opinione del P. Paoli Servita, consultor di Stato. In Venezia appresso, Rob. Matthei, 1681.

[3] Cantù, l. xv. P. ii. c. vi. Cf. Armonia, 10 Apr. 1861.

[4] Respons. Facult. Theol. Paris, in Additions au Journal de Henry III. t. i. p. 317. Ranke, Päpste, ii. 188.

[5] Crétineau-Joly, Hist. de la Comp. de Jésus, t. ii. p. 404 seq.

[6] Arrêt du Parlement de Toulouse, 22 Août 1589. Mémoires de la Ligue, t. iv. p. 51. Dumoulin, Annotat ad Clementinas, l. iii. tit. 15.

[7] Ranke (Päpste, ii. p. 193) acknowledges that many Catholics assented to the doctrine of the divine right of the royal authority defended by Protestants (particularly in the work Explicatio controversiarum, quae a nonnullis moventur ex Henrici Borb. regis in regnum Franciae constitutione. Opus a F. Bercheto Lingonensi e gall. in lat. sermonem conversum, Sedani, 1590), and he cites particularly the work published in Paris in 1588, apud Capet, Collection Universelle des Mémoires, t. lvi. p. 44. Cf. Etienne Pasquier, Recherches de France, 341, 344.

§ 11.

The right of refusing obedience to lawful rulers was conceded by the judicial theory to the people in certain cases, in the interests of their temporal welfare; with greater reason therefore was it conceded when their eternal salvation was concerned.[1] Protestant theologians, setting aside the power of the keys, taught that Holy Scripture allowed the people, for religious motives, to depose their sovereign, or withdraw from him their allegiance. They could not therefore declare it to be unscriptural to dispense an oath by means of the power of the keys, which, up to a certain point, they recognised.[2] Moreover, in the case of Henry III. no such decision emanated from the Church; they appealed to reason and argument:—The Christian must rank his religion above his life, as is seen from Holy Scripture and the examples of the martyrs; therefore what is permissible for the preservation of life is permissible for the preserva-

tion of the faith. The people cannot be bound to obey the civil government when this is abused to endanger and destroy religion. An oath of obedience, in this case, is not binding; to keep it would be a grave sin against God and against His law, a partaking in an offence against the Creator; it would be placing a sword into the hands of a madman. Besides, the example of the king has an almost irresistible weight; from Jeroboam to Queen Elizabeth, a ruler imbued with animosity against religion has only too often succeeded in completely extinguishing it in the people. The strongest ties of human society are loosed when they are misused to offend God: the son is then no longer bound by paternal authority, the wife no longer owes obedience to her husband.[3] The tie that binds the subject to his sovereign is not stronger than these. The divine command to guard the faith and be steadfast to God till death is a higher command than that of obedience to civil authority.[4]

[1] W. Allen, Ad Persecutores Anglos pro Christianis Responsio, 1582: 'Si reges Deo et Dei populo fidem datam fregerint, vicissim populo non solum permittitur, sed etiam ab eo requiritur, ut jubente Christi vicario, supremo nimirum populorum omnium pastore, ipse quoque fidem datam tali principi non servet.' Person (Andr. Philopat.) ad Elizab. Reg. Edictum Responsio, n. 162: 'Non tantum licet, sed summa etiam juris divini necessitate ac praecepto (?), imo conscientiae vinculo arctissimo et extremo animarum suarum periculo ac discrimine Christianis omnibus hoc ipsum incumbit, si praestare rem possunt.' N. 160: 'Incumbit vero tam maxime .... cum res jam ab Ecclesia ac supremo ejus moderatore Pontifice nimirum Rom., judicata est; ad illum enim ex officio pertinet, religionis ac divini cultus incolumitati prospicere et leprosos a mundis, ne inficiantur, secernere.' Cf. Bianchi, t. ii. l. v. § 1, n. 2, p. 43.

[2] Bossuet, Hist. des Variations, l. i. n. 1; l. vii. n. 1, 2; l. x. n. 24-56. Défense de l'Hist. des Var. n. 5, 15. Bianchi, t. i. l. iii. § 1, n. 5, pp. 440, 441.

[3] Innoc. III. c. Gaudemus, iv. 8, de Divort. Bellarm. de Rom. Pont. v. 7, § Tertia ratio.

[4] Bianchi, l.c. n. 5, pp. 43, 44.

§ 12.

But should not Christian subjects suffer death rather than offer resistance, even when they have the power of doing so? Christian perfection would counsel this, but not as a duty to be performed under all circumstances. For the natural law allows

resistance to be offered justly in self-defence, and recognises no duty of unconditionally renouncing such resistance. When religion as well as life has to be preserved, there is all the more reason for exerting every effort.[1] The example of the first Christians proves nothing in this instance. Their position was quite changed when once public order had become subservient to the interests of Christianity. The excuses that were valid for a heathen government do not hold good for one which in these days persecutes the Church. Moreover, a revolt would then have been quite unavailing, and would even have been injurious to the Christian cause.[2] The mode of defending religion is twofold.[3] It may be done after the manner of Eleazar (2 Macchab. vi. 18-31) by martyrdom, or after that of Mathathias (1 Macch. ii. 1 seq.), who aroused his friends and relations to resist the oppression of the heathen.[4] What the natural law permitted to the Macchabees under the old covenant cannot be, in similar conditions, prohibited under the new covenant. Wars against the Saracens, especially the Crusades, were universally held to be just. Luther's proposition that to fight against the Saracens was to withstand God, who used them to punish the sins of Christians, was condemned by Leo X.[5]

[1] Bianchi, l.c. § 5, n. 6, pp. 44, 45.

[2] Bellarmin. l.c.

[3] Bianchi, l.c. n. 7, pp. 45, 46.

[4] Gregor. Naz. Orat. 15, in Laud. Maccab. t. i. p. 286 seq. ed. Maurin. Cf. Grot. l.c. l. i. c. v. § 7, n. 7.

[5] Leo X. Const. Exsurge Domine, May 16, 1520, prop. 34 (Denzinger, Enchir. p. 224, n. 658). No doubt other than religious motives, especially political motives, operated in the Crusades; for the Mahometans were the constant and dangerous enemies of Christian kingdoms (Bossuet, P. i. l. iv. c. xv. p. 366); but for the most part religious motives were prominent. The Mahometan princes of Egypt, Syria, and Palestine had done no injury to St. Louis, for instance, and yet he made war upon them. Spondan. a. 1248, n. 10. Bianchi, l.c. n. 8-10, pp. 46-48.

§ 13.

On the 7th May 1590, the University of Paris formally denounced Henry IV. as a heretic; and in 1591, E. Richer, subsequently so celebrated, sustained in the Sorbonne the thesis that

the estates of the kingdom were superior to the king, and that Henry III., as a tyrant, had been lawfully assassinated.[1] Jean Boucher, rector of St. Benoit, made similar assertions from the pulpit; his discourses were shortly after printed.[2] But when, after the entry and triumph of Henry IV., the League (composed notoriously of all ranks of society, and allied to the parliament, university, and city of Paris) was dissolved, all these utterances were ascribed exclusively to the Jesuits, who were charged with having originated the doctrine of tyrannicide. Yet they had spoken only in the same manner as other theologians; they had treated the subject merely theoretically and as an abstract question, whilst their opponents, especially in the university, had pointed out the particular tyrants. Every one knew, as the famous Breton Procureur-général, La Chalotais, declared,[3] that the Jesuits had not invented the doctrine of tyrannicide; that many of them, for instance the calumniated Father Claude Mathieu,[4] had emphatically protested against it; and that in general it was not in France, but in Spain, that these questions had been mostly discussed by Jesuits. The founder, St. Ignatius, desired that politics should be altogether excluded from his Society; but in the sixteenth century all court affairs, all diplomatic negotiations, and even wars, had more or less of a religious stamp. They all tended either to uphold or stamp out Catholicity. Jesuits were thus obliged to share in the movement of ideas, social and political; and when the General Aquaviva demanded from Pope Sixtus V. that he should issue a prohibition of any political activity on the part of the Jesuits, the Pope did not accede to his request.[5]

[1] Card. Du Perron, Lettre à M. Casaubon, 15 Avril 1612 (Ambassade du Card. Du Perron, p. 696; Pey, de l'Autorité des deux Puissances, ii. p. 496): 'L'an 1591, au mois d'Octobre, il (Richer) soutint publiquement en Sorbonne, que les états du royaume étaient indubitablement par-dessus le roi, et que Henry III., qui avait violé la foi donnée à la face des états, avait été, comme tyran, justement tué. Ce sont les propres mots de ses anciennes thèses, dont j'ai l'original imprimé entre les mains.'

[2] Sermons de Jean Boucher, Paris, 1594, esp. pp. 162, 194. Cf. Ranke, Päpste, ii. pp. 186, 187.

[3] Compte-rendu au Parlement de Rennes, p. 209.

[4] He wrote on 11 Feb. 1583: 'On ne peut pas, en conscience, attenter

à la vie du roi, et le Pape Grégoire XIII. a condamné ceux qui osent penser ou enseigner le contraire.' Mémoires de Nevers, t. i. p. 657. Crétineau-Joly, l.c. p. 626.

[5] Crétineau-Joly, t. ii. c. iv. pp. 175, 395. Vide also ib. p. 397 seq. Aquaviva's letter, of Feb. 22, 1586, to P. Mathieu, to which the latter (†1587) submitted.

§ 14.

The book of Mariana[1] (died 1624), written expressly for the Infant of Spain, occasioned much stir. His two last books, which treat of the education of princes, are still worthy of being read and laid to heart; but the first book, although written unmistakably with a good intention, is defective in many parts.

His chief errors, for which his devotion to the classical authors of antiquity may in great measure be made accountable, lie in his theory of the democratic origin of all monarchies, in his advocacy of the principle of the sovereignty of the people, and in his doctrine of the permissibility of tyrannicide. With regard to the last point, he always, as his whole treatment of the subject shows, presupposes a tyrant whose crimes are excessive and exceptional; he also presupposes entire unanimity of public opinion concerning the magnitude of the tyranny, the failure of all other measures for putting a stop to it, and security from the advent of greater evils ensuing upon the tyrant's death. His companions in the order were dissatisfied with his doctrine, especially in France. Père Richeome, Provincial of Guienne, lodged a complaint against it in Rome. Claudius Aquaviva, General of the Jesuits, published a decree[2] on the 6th July 1610, strictly forbidding members of the Society to teach or maintain that any one, under any pretext whatever of tyranny, was allowed to assassinate, or make a murderous attempt upon, any prince or king.[3] When Paul V. found fault with the parliament for burning the work, it was because this act was an encroachment upon the ecclesiastical authority.[4] It is untrue that Mariana justifies and extols the assassination of Henry III.:[5] he speaks of it, in the introduction to the sixth chapter, as a deed condemned by some, extolled by others. He simply states the view of either party.[6]

[1] De Rege et Regis Institutione, libri tres. Cf. Rissel, Die Aufhebung des Jesuitenordens, Mainz, 1855, 3d edit. p. 289 seq.

[2] Crétineau-Joly, t. ii. p. 420 seq. Buss, Gesellsch. Jesu, p. 901. Rissel, l.c. p. 298 seq. Rintel, pp. 63, 64.

[3] He adds in the decree the reason: 'Ne videl. isto praetextu ad perniciem principum aperiatur via atque ad turbandam pacem eorumque securitatem in dubio vocandam, quos potius ex divino mandato revereri ac observare oportet tamquam *personas sacras a Domino Deo pro felici populorum gubernatione in eo statu constitutas.*' Its observation is to be strictly enforced by all provincials under pain of deposition from their office, that all may recognise what is the view of the Society on this point, and that the errors of an individual may not make the whole Society suspected of error.

[4] De Brèves, 8 July 1610 (apud Gaillard, Notices et Extraits des mss. Paris, 1804, p. 331): 'Sa Sainteté m'a répondu, qu'elle ne pouvoit que blamer grandement semblables écrits, et confessoit qu'ils méritoient d'être brûlés et ceux que les font châtiés; mais qu'il auroit été plus à propos que le dit livre eût été brûlé par ordre de l'évêque de Paris ou des cardinaux qui sont en France, que non par l'autorité et ordonnance de la dite cour.'

[5] Huber, p. 44.

[6] In conclusion he says: '*Haec sunt utriusque partis praesidia*, quibus attente consideratis, quid de proposita quaestione statuendum sit, explicare non erit difficile.' Then begins the author's own discussion of the matter. To the question, 'an liceat tyrannum veneno occidere,' in c. vii., the answer is a decided negative; and also the things said (c. vi.) are called a private opinion, possibly erroneous, for a rectification of which the author would be grateful. Cf. concerning him, Civiltà Cattolica, No. 133, Oct. 1855, p. 39 seq.

§ 15.

Suarez (died 1617) distinguishes strictly between an unlawful usurper and a legitimate but tyrannical ruler. The former may be removed, he says, by force, either by the whole nation or by individual members, whenever the conditions of a just warfare are present, when no other means exist for being rid of him, and when the consequences of his death will not be worse than the tyranny itself;[1] at the same time he acknowledged that other learned men, for instance, the Jesuit Jodok Azov (died 1609), held a different opinion. But Suarez also teaches that a legitimate prince, how great soever his tyranny, must never be assassinated by a private individual;[2] only the body and commonwealth of the nation, under the condition of a just warfare, and in self-preservation, might revolt against the tyrant.[3] But a struggle of the people against a prince who is

neither a tyrant nor a usurper he condemns as a wicked rebellion.[4] It has been particularly objected to Suarez[5] that he assumes that a legitimate ruler who has been lawfully deposed is to be treated as an illegitimate usurper, because, having been rightly deposed, he has ceased to be a legitimate ruler. The objection rests on a confusion of two distinct matters: the question here is not so much who has the right of deposing a prince, and whether such a right exists at all, as whether a ruler, the legality of whose deposition is presupposed, should be regarded as no more than a tyrannical interloper if he seeks to regain the power he had lost. It is a question whether the aforesaid supposition can be made, but if it is made, Suarez is quite consistent. For the rest, he teaches that all action in this matter should be gradual; that a deposed king may not be at once killed by any private person, and is not to be forcibly expelled, unless this was declared specifically in the sentence, or another sentence or command were issued to that effect.[6]

[1] Suarez, disput. 13, de Bello, sect. 8, prop. 2: 'Quando priori modo accidit tyrannis, tota respublica et quodlibet ejus membrum jus habet contra illum, unde quilibet potest se ac rempublicam a tyrannide liberare. Ratio est: quia tyrannus ille aggressor est et inique bellum movet contra rempublicam et singula membra, unde omnibus competit jus defensionis.'

[2] 'Certe veritas est, contra hujusmodi tyrannum (quoad solum regimen) nullam privatam personam aut potestatem imperfectam posse juste movere bellum aggressivum, atque illud esset proprie seditio. Probatur: quoniam ille, ut supponitur, verus est dominus; inferiores autem jus non habent indicendi bellum, semper singulis facit injuriam; atque si invaderet, id solum possent efficere, quod ad suam defensionem sufficeret.' We should remark that Suarez, in the Defensio Fidei, notices some learned jurists, like Paris de Puteo, counsellor of King Ferdinand I., and Anton Massa of Naples, who go further, and would have conceded to every individual the right of violent attack upon an insupportable tyrant. Werner (Fr. Suarez, i. p. 144 seq.) gives an exposition of the doctrine taught in the Defensio.

[3] Disput. de Bello, l.c.: 'At vero tota respublica posset bello insurgere contra ejusmodi tyrannum, neque tunc excitaretur proprie seditio (hoc siquidem nomen in malam partem sumi consuevit). Ratio est: quia tunc tota respublica est superior rege; nam cum ipsa dederit illi potestatem, ea conditione dedisse censetur, ut politice, non tyrannice regeret.' Defens. iii. 3: 'Si rex justam suam potestatem in tyrannidem verteret, illa in manifestam civitatis perniciem abutendo, posset populus naturali potestate ad defendendum se uti, hac enim numquam se privavit.'

[4] Disput. de Bello, l.c. prop. 3: 'Bellum reipublicae contra regem neutro modo tyrannum est propriisime seditio et intrinsece malum.'

[5] Huber, p. 44.

[6] 'Non tamen statim posse regem depositum a qualibet privata persona interfici, imo neque per vim expelli, donec eis praecipiatur vel generalis commissio haec in ipsa sententia vel jure declaretur.'

§ 16.

Like Suarez, Gregory of Valentia is accused of having taught the doctrine of tyrannicide, and 'that a lawful monarch who misuses his authority to the destruction of the State is a tyrant, who may be sentenced to death by a State tribunal, and executed.[1] These words are nowhere to be found amongst his works. He follows the Dominicans, Cajetan and Soto,[2] in the usual distinction between the usurper and the legitimate monarch who abuses his power: of the latter he only says no private person may attempt his life, and it is alone lawful that the commonwealth should resist him, and call in the aid of individuals against him.[3] He does not say that an unlawful tyrant may be assassinated by any one who chooses to do so; but without any reference to tyrants, makes an abstract examination of the question whether a law could be passed granting to any one the right of killing an evildoer *before* he has been judicially sentenced. He denies it, as being contrary to the natural law, but says the case is quite different if, *after* the condemnation, the sovereign or judge declare the criminal to be an outlaw.[4] Gregory neither says, nor intimates in any way, 'that the Pope can declare a sovereign to be a tyrant.'

[1] Huber, p. 43, where t. iii. disput. 5, q. 8, punct. 3, is quoted.

[2] Cajetan, in S. Th. 2, 2, q. 64, a. 3. Soto, de Justit. l. v. q. 1, a. 3.

[3] Punct. 3, p. 1323: 'Vel est tyrannus non per arrogatam sibi injuste potestatem sed solum *per pravum legitimae alioquin auctoritatis* usum in gubernando, aut est tyrannus *per arrogatam potestatem*, quam vi obtineat. Si est tyrannus *primo* modo, nulli particulari licet eum occidere. Nam id pertinet ad rempublicam, *quae posset jure oppugnare illum et vocare in subsidium cives.* Si autem esset tyrannus *secundo* modo, quilibet posset eum occidere, nam tota respublica censetur gerere bellum justum contra ipsum, et ita civis quilibet, ut miles quidam reipublicae, posset eum occidere.'

[4] Ib. p. 1325: 'Si tamen esset jam aliquis *legitime condemnatus*, posset princeps vel judex facere facultatem cuilibet eum occidendi, ut v.g.

si reus aufugisset. Neque in tali casu posset reus se defendere; esset enim ei ablatum jus per judicem; alioquin jam bellum esset justum ex utraque parte, quod est impossible.'

§ 17.

The doctrine of other Jesuits does not differ from this essentially ;[1] they generally maintain the doctrine current in their day. This is the case with Molina.[2] After the decree of the General of the Society, Aquaviva, in 1610, we never again find tyrannicide defended. Werner truly observes :[3] 'Mariana alone has defended tyrannicide in the strict sense, that is, when a man takes upon himself to kill a legitimate ruler lawfully sentenced. The utterances and declarations of Jesuits upon the question of tyrannicide, debated so frequently during the sixteenth and seventeenth centuries, are connected with each other; the principles of Becanus, Janner, Escoban, Dicastillo, are the same as those of Suarez, whose teaching has even been modified by restrictions or explanations added by other Jesuits, and thus withdrawn from the danger of misinterpretation.' We may commonly find in the writings of later Jesuits these two propositions, which any moralist might subscribe: (1) It is not allowable to kill a lawful sovereign, even if his government be tyrannical and oppressive; (2) Neither is it allowable to kill a usurper who has attained to the possession of power; it is only allowable before he has attained to power, by the authority of the lawful sovereign, in war, and for the defence of the State.[4]

[1] Em. Sà, Aphorismi Confessariorum, v. Tyrannus, Colon. 1690, p. 360: '*Occupantem* tyrannice potestatem quisque de populo potest occidere, *si aliud non est remedium*: est enim *publicus hostis*.' But he who is merely 'tyrannus administratione' can only be deposed by a public sentence, which, when it has received the force of law, may be carried out by any one. An admonition must, however, precede the sentence.

[2] He teaches that political power is from God by the natural law; that forms of government (monarchy, aristocracy, or democracy) may be instituted in various ways; that power once conferred upon a king may not be withdrawn or lessened by the people; and that the king must not pass the established limits of power; that if he does so, not individuals but the commonwealth of the nation may resist him. Tract. 2, de Justitia et Jure, disput. 22, n. 8, 9, 10, t. i. pp. 48, 49; disput. 23, n. 4, 11, 12, pp. 49, 50, ed. Antwerp, 1615 seq.; ib. n. 5, 9, 10, p. 50: 'Si tamen rex potestatem sibi non concessam vellet assumere, posset quidem *respublica* ei

tamquam *tyranno* ea *in parte* resistere, perinde ac cuivis alteri extraneo, qui reipublicae injuriam vellet inferre.' Here the limitation of royal authority is presupposed as long since put, and resistance is alone held permissible to a usurped authority.

[3] K. Werner, l.c. i. p. 147.

[4] Anton Escobar (†1669) apud Riffel, l.c. p. 290, n. 1. Busenbaum, Medulla Theol. Moral. l. iii. tr. 4, c. i. dub. 3, n. 8, pp. 138-140. Gury, Theol. Mor. t. i. p. 152, n. 394, ed. Ratisbon, 1862.

The wrong of active resistance was recognised in proportion as the proposition gained ground that royal authority did not come from the people, and could not be withdrawn by them, and had no superior on earth; and the more as experience showed that a few factious men made profit out of the pretext of tyranny, and inflicted more injury on the people than anything they might have suffered before. Card. Gerdil, l.c. p. 25: 'Hinc nulla sive in privatis sive in ipsa communitate facultas aut jus remanet resistendi principi, etiam per speciem vel pretextum mali regiminis. Secus in communitate duplex vigeret publica et suprema potestas, quod plane repugnare vel ipse Burlamaquius agnoscit. Est porro subjectorum maxime Christianorum officium, patienter id mali quidquid est potius tolerare quam adversus supremam potestatem rebellare; nam et dyscolis etiam praepositis obediendum, S. Petrus omnino praecipit. Quod si ex historiarum monumentis rerum gestarum memoriam repetere volumus, comperiemus: (1) Quoties per speciem mali regiminis populi rebellarunt, in id eos semper a paucis factiosis incitatos esse, qui populorum credulitate abuti tentarunt ad privatum commodum et lucrum; (2) In his civilibus bellis ac motibus multo atrocioribus cladibus populos afflictos esse, quam ea incommoda fuerint, propter quae arma sumpserunt.' Cf. Walter, Naturrecht, § 360, p. 329 seq., who also makes reference to many Catholic and Protestant authors; *e.g.* Petrus Gregorius of Toulouse (†1617), de Republica, Lugd. 1586, l. xxvi. 7; Zallinger, Inst. Jur. Nat. § 213; Taparelli, Naturrecht, ii. § 1005-1045; Kant, Rechtslehre, § 49; Anm. A. Trendelenburg, Naturrecht, § 214, 215. Cf. Stahl, Philos. d. R. ii. 2, § 154 seq. 3d edit.

§ 18.

What is to be said of those who have made it their object to brand Jesuits as defenders of regicide?[1] Do they not know how much stronger were the assertions made by the predecessors of the Jesuits concerning tyrannicide—the only form of regicide ever in question? Do they not know what the secular and regular clergy[2] and the Protestant theologians of the sixteenth and seventeenth centuries taught contemporaneously with the Jesuits we have cited?[3] Do they not know that in countries like Germany and Spain, where individual Jesuits taught that, under greater or less limitations, tyrannicide was allowable, no kings were put to death; but that in France and England,

where kings have been expelled and killed, Jesuits never taught that doctrine?[4] Do they not know that the greater number of Jesuit writers have strenuously combated the doctrine that tyrannicide is allowable, that Jesuit supporters of this doctrine are comparatively few, that these are amongst the earlier members of the Society, and that they guarded their doctrine by many prudent limitations? Will these accusers of Jesuits still appeal to pamphlets[5] which a wider learning has long since refuted? Will they still, in their battle against the Society, employ the weapons of lies and falsification made use of by those who concocted the *Monita Secreta*,[6] and who complain of the immorality of the obedience practised by Jesuits?[7]

[1] Thus Paul Sarpi, Ep. 31, 32 (apud Le Bret, Magazin, ii. 318, 322); Huber, p. 41 seq.

[2] Prof. Merkle, as early as May 1870, in the Augsb. Pastoralblatt, answered Herr Huber shortly and to the point, in the form of five questions. The second question ran thus: 'Why does Herr Huber merely name the Jesuits Molina, Salmeron, Valentia, Suarez, Mariana, and Santarelli? He might equally with these six have named eleven other members of the Society of Jesus, namely, Em. Sà, Toletus, Delrio, Sales, Heiss, Lessius, Becan, Gretser, Janner, Castro Palao, and Escobar, who have all treated the question of tyrannicide (not regicide). The reason was, that it would have been too difficult to find in their writings anything to serve his purpose.'

[3] Documents historiques, critiques, apolog. concernant la Compagnie de Jésus, Paris, 1828, t. ii. p. 82 seq. The number of these authors is four times as great. Merkle, l.c.

[4] Cf. the discussion in full, apud Riffel, pp. 280-304. Concerning the complaints with regard to the attempt upon Henry IV., cf. Mathieu, Hist. de la Mort déplorable de Henri IV. p. 120; Dupleix, Hist. de Henri le Grand, p. 163; Crétineau-Joly, t. ii. p. 445 seq.; Buss, Die Gesellsch. Jesu, Mainz, 1853, ii. pp. 895 seq. 915 seq. Merkle inquires: Why does Herr Huber conceal the fact that the party which publicly announces 'that the world cannot prosper until the last king shall have been strangled with the entrails of the last priest' is the deadly enemy of the Jesuits? As an instance of the opinion of a writer not a Jesuit, but holding nearly the same view, we may quote Leibnitz, Letter to Freiherr v. Boyneburg: 'Concerning the great question still agitated of the power of sovereigns and the obedience due to them from the people, I think it would be well if the rulers were convinced that the people were justified in resisting them, and the people on the contrary believed that they were bound to a passive obedience. Nevertheless I nearly agree with Grotius in thinking that as a rule obedience is necessary, for generally rebellion is attended with far greater evils than the tyranny that called it forth. Still I allow

that the prince may so far overstep his authority and the welfare of the State be so far endangered as to remove the duty of bearing the ill-government. But this case is very rare, and a theologian who would permit any attempt to be made under this pretext should exercise great discrimination and watchfulness lest he should fall into excess, for excess here is far more dangerous than remissness' (Commerc. Epistol. Leibnitz, Selecta Specimina, ed. Feder, p. 402). In 1710 he wrote thus to Thomas Burnett: 'Tell me whether the moderate Tories do not acknowledge that there are *extraordinary cases* when passive obedience ceases and it is allowable to resist the sovereign, and whether the moderate Whigs do not agree that such resistance should not be lightly offered, but only for grave reasons? The case is similar to that of the right of succession by inheritance, which must not be departed from *except when the welfare of the country forces such a course upon the people.* For it is mere superstition to believe that *these things are of inalterable divine right;* even the Sabbath is not so strict an ordinance' (Guhrauer, G. W. Frhr. v. Leibnitz, ii. 305 seq.).

[5] Amongst these are Morale Pratique des Jesuites, by Arnauld, derived for the most part from the Teatro Gesuitico, a lampoon condemned in Spain in 1655, and in Rome on 26 Feb. 1656; also a work quoted by many modern writers (as by Gieseler, K. G. iii. ii. p. 628, n. 36), Extraits des assertions dangereuses et pernicieuses que les soi-disants Jésuites ont dans tous les temps et persévérament soutenues, enseignées et publiées dans leurs livres avec l'approbation de leurs supérieurs et généraux, verifiés et collationés par les commissaires du Parlement, à Paris, 1762. Theiner (Hist. du Pontificat de Clément XIV. t. i. p. 47) calls this work a 'sink of lies.' The work written against it, published in Paris, 1763 (Réponse au Livre: Extraits des Assertions dangereuses, &c.), proved 457 misquotations from the Latin and 361 from the French; and other works refuted it more fully (Nouvelles Observations sur les jugemens rendus contre les Jésuites, Bourdeaux, 1763; Kurzer Inbegriff der Anklagen wider die Gesellschaft Jesu in Frankreich nebst deren Beantwortung: from the French, Augsb. apud Wagner, 1762). Many French bishops published pastorals against the pamphlet, and it was condemned by Clement XIII. in 1764 (Bull. Clem. XIII. t. iii. pp. 9, 16, 17 seq.).

[6] This was first published at Cracow in 1612, and revived in Paris in 1761 (at a time when the Order was undergoing violent attacks). The Bishop of Cracow had proceeded against the author, and the composition was condemned in Rome on 10 Dec. 1616 as a forgery. Cf. Barbier, Dictionnaire des Anonymes et des Pseudonymes, t. iii. n. 20,985; Crétineau-Joly, t. iii. pp. 372, 373; Bonner, Theol. Literaturblatt, 1867, No. 9, p. 329 seq., where the Leipzig edition of Parson Bergmann is treated of; [Monita Secreta of the Society of Jesus, by the Rev. T. B. Parkinson; the Month, July-August 1873. Tr.]

[7] The work of Dr. Weber, Der Gehorsam in der Gesellschaft Jesu (Breslau, 1872), was fully refuted in the Laacher Monatschrift, vol. i. pp. 458-466, 548, vol. ii. p. 72 seq. Doctors of the Church from St. Basil to St. Bernard have said quite the same of the obedience of regulars. [See also Remarks on a late Assailant of the Society of Jesus, reprinted from the Month and Catholic Review, Burns & Oates, London, 1875. Tr.]

§ 19.

To throw odium upon the Society, Jesuits are accused of appearing on the one hand to acknowledge the sovereignty of the people, by placing the source of royal authority in the people; on the other hand, practically rendering this vain by asserting an act such as the institution of a king performed by the people only obtains validity through its ratification by the Pope, who properly can alone depose and appoint kings.[1]

But this is a misrepresentation of their doctrine. As a fact, they placed the source of royal authority in God, and taught that the Pope's ratification was by no means requisite in all cases; neither did they ever attribute to him an unconditional right of deposing sovereigns. A doctrine moreover is attributed to Jesuits which had been taught by other writers long before the existence of this Society. Cardinal Vincent Petra teaches: The institution of kings arises primarily from the natural law, secondarily from public law;[2] nations without a king may choose a king for themselves;[3] heathen nations have no need of the consent of the Pope for this, though Christian nations should seek his consent at the elevation of new kings;[4] a Christian nation cannot depose its king without the consent of the Pope.[5] A decision from the supreme guardian of Christian morality, a declaration from the Supreme Head of the Church is to be sought on occasion of the institution of a new king or of a new dynasty. The reasons are, that power once delegated to the sovereign no longer rests in the people; obedience is due even to a bad ruler, and the right of withdrawing obedience from one who is the open and public enemy of the people, or who would coerce them into rebellion against God, is founded, not upon their possession of a superior right, but upon the law of self-preservation.[6] Other reasons are, that in this matter the nation is very liable to be misled by deceit and false strivings after liberty into immoral action,[7] and that even the plea of liberty of conscience may be converted into a firebrand; lastly, that the deposition of a king is the dissolution of a tie sanctioned by religion. This view of the Papal office would, it is

evident, impede, not facilitate, revolution; the Pope appears as the safeguard of legitimacy. His whole position obliges him to protect this, and to uphold everywhere the divine law. His decision, based upon fixed principles of justice, is opposed to the frivolity and caprices of the populace. The false religion of the sovereign would not be held sufficient reason for resistance or deposition, though the duty of maintaining the true religion against violent efforts to destroy and ruin it would be so.[8] This was the principle adhered to firmly in Catholic mediæval States, and all mediæval history is interwoven with its results.

[1] Huber, p. 42. Cf. Döllinger, in A.Z. March 1872.

[2] Comment. in Const. Apost. t. ii. p. 121, in Innoc. III. Const. iv. n. 4, 5, with reference to l. v. Ex hoc Jure Dig. de Just. et Jure, i. 1; Arist. Polit. iii. 4; Cic. de Rep. l. iii.; Aug. c. Julian. iv. 12.

[3] Com. in Innoc. III. Const. 8, n. 3, t. ii. p. 132. Grot. de Jure Belli et Pacis, l. i. c. iii. n. 8.

[4] 'In creandis *novis* regibus indigent ejus assensu,' l.c. n. 5.

[5] Ib. n. 13, 14, p. 134.

[6] Bianchi, t. i. l. i. § 7, n. 5, pp. 72, 73.

[7] Justin. Hist. l. xviii. c. i.: 'Saepe libertas et speciosa nomina praetexuntur, nec quisquam alienum servitium et dominationem concupivit, ut non eadem ista vocabula usurpavit.'

[8] Bianchi, l.c. § 5, n. 1, pp. 40, 41; § 7, n. 5-7, pp. 73-75.

ESSAY XV.

ECCLESIASTICAL JURISDICTION.

MANY people in these days take offence at the extent of spiritual jurisdiction exercised in former times, especially at the exemption of the clergy from civil courts of justice; and as the Popes are supposed to have been the chief supporters of such usurpations on the part of the hierarchy, they have to bear the brunt of the attack. Ecclesiastical jurisdiction was long since attacked by Protestants following Marsilius Patavinus, who wished to deprive the clergy of all jurisdiction,[1] and William Occam, who denied the Pope any coercive power;[2] but on the other hand it has been acknowledged even by Protestants, and amongst them men like Samuel Basnage,[3] learned in Christian antiquity, to be founded on divine right, and to be therefore just.

[1] Goldast. ii. 310. Friedberg, de Fin. &c. pp. 63, 64.

[2] Friedberg, p. 64, n. 3.

[3] S. Basnag. Annal. Eccles. t. ii. diss. 4, de Eccles. Tribunali, § 1: 'Tribunal Ecclesiae *jubente Deo* erectum fuisse faciles largimur Baronio. Etenim nulla societas consistere potest absque auctoritate poenas illis irrogandi, qui compositas sancitasque leges evertunt atque perfringunt. Propterea Apostolus (1 Tim. v. 17, 19) meminit presbyterorum, qui bene praesunt, et Timotheum monuit: accusationem ne recipito, nisi sub duobus aut tribus testibus. Quibus constitutum in reos judicium indicatur. . . . Neque a principum voluntate Ecclesiae tribunal, sed ab ipso Christo originem ducit.'

PART I. ECCLESIASTICAL JURISDICTION BEFORE THE THIRTEENTH AND FOURTEENTH CENTURIES.

§ 1. Ecclesiastical jurisdiction till the time of Constantine. § 2. After Constantine. § 3. In the East. § 4. In the Germanic Empire. § 5. Crimes of the clergy under the Roman emperors. § 6. Immunity and barbarism of the clergy. § 7. Charge of over-leniency in the punishments of ecclesiastics. Decretal of Celestine III. § 8. Charge against Alexander III.

§ 1.

Even before Constantine the Great, jurisdiction in civil and criminal causes was exercised by the Church.[1] The Apostle (1 Cor. vi. 1 seq.) forbade the faithful[2] to carry their causes before heathen judges; and the bishops being endowed as successors of the Apostles with a spiritual power to judge and chastise,[3] appear as the natural judges of the faithful in all judicial matters. When Christians were in danger of being obliged to swear to the gods or deny their faith before heathen judges, the Church forbade them to accept civil offices or carry their causes before heathen judges, and withdrew them partially from the State, making use of the indirect power over temporal matters, and *per accidens* deciding temporal affairs.[4] When the emperors had been converted to Christianity the rule was still maintained that no Catholic should, under pain of excommunication, bring his cause before a judge holding any other faith,[5] and that no cleric under pain of deprivation should bring an action against another before a temporal judge.[6] The Church also later asserted her jurisdiction.[7] It was not first granted to her by the emperors, but sometimes with more, sometimes with less restriction they acknowledged it as already existing.[8]

[1] Constit. Apost. l. ii. c. xi. xii. xxxvii. xlii. xlv-xlix. Can. Apost. 3 seq. 74 seq. Tertull. Apol. c. xxxix. Cyprian, Ep. ad Cornel. (Labbé, Conc. i. 716, ed Venet.). Conc. Eliberit. 305, c. 74, 75. Cf. Thomassin, de Vet. et Nova Eccl. Disc. P. ii. l. iii. c. ci.

[2] Aug. Enchir. ad Laur. c. lxxviii.: 'Extra Ecclesiam judicia finiri Apostolus *terribiliter vetat*.' Serm. 24, in Ps. 118: 'Constituit enim talibus causis ecclesiasticos Apostolus cognitores, in foro *prohibens* jurgare Christianos.'

[3] 1 Cor. iv. 18; v. 1 seq.; 2 Cor. x. 6 seq.; xiii. 2 seq.; 2 Thess. iii. 14; 1 Tim. i. 20; v. 19 (cf. Theodor. H. E. i. 21); 2 Tim. iv. 15. Bianchi, Della Potestà e della Polizia della Chiesa. Roma, 1746, t. iv. l. ii. c. iv. § 1 seq. pp. 581 seq. 587 seq.

[4] Bianchi, l.c. n. 13, pp. 495, 496.

[5] 'Catholicus, qui causam suam sive justam sive injustam ad judicem alterius fidei provocat, excommunicetur.' Thus the so-called fourth Council of Carthage, 398, c. 87, more properly—cf. Hefele, Conc. ii. p. 63 seq.—Statuta Eccl. Antiquae, c. 30 (Ballerin. Opp. Leon. M. t. iii. p. 659).

[6] Council of Hippo, 393, c. 9; of Carthage, 407, c. 10 (st. 104). Hefele, l.c. pp. 53, 89; c. 43, c. xi. q. 1. Cf. Statuta Eccl. Ant. c. 1 seq. d. 90.

In the Synod of Mileve, 402, c. 2 (Cod. Afr. n. 87, 88; Hefele, ii. p. 74; cf. c. 1, de Judic. ii. 1), Bishop Quodvultdeus was excommunicated because he would not present himself before the provincial Synod.

[7] In the Synod of Aquileja in 381, St. Ambrose, with universal assent, uttered the anathema upon Bishop Palladius, and said amongst other things: 'Quoniam *et in hoc* ipse damnandus est, quod laicorum exspectat sententiam, *cum magis de laicis sacerdotes debeant judicare*' (Labbé, ii. 1174, ed. Ven.). Chifflet's doubts concerning the acts have long since been refuted. Hefele, Conc. ii. p. 34, No. 2.

[8] It has often been asserted that the ecclesiastical jurisdiction mentioned, 1 Cor. vi. 1 seq., was merely an arbitration (Bossuet, Defens. P. i. l. i. sect. 2, c. xxxvii. p. 180). But we must distinguish two classes of judges (*arbitri*), l. ii. Si arbiter, Cod. 7, 45, de sent. et interloc.; l. Pacisci, 1, Dig. xxiii. 4, de pact. dotal; ib. l. iv. tit. 8, de receptis qui arbitr. recep.; l. xxiv. Dig. xvi. 3, deposito vel non; l. xvii. Dig. de neg. gest. 3, 5). They were appointed either merely to arbitrate or else to pronounce judgment. The former were connected with the judicature, and the *actiones* were to be brought before them; not so the latter. If we understand the first class, how could Christians be bound to an arbitration which in its nature was free? If we understand the second class, how could Christians be forbidden to bring the action before the ordinary judge? (Procul. in l. iv. Societatem, § 1, Dig. xvii. 2, pro soc.; Schmalzgrueber, in l. i. Decret. tit. 43, n. 1 seq.; Bianchi, t. i. l. iii. § 4, n. 12, pp. 493-495). As a matter of fact the bishops administered justice, and considered themselves bound to do so (cf. Synes. Ep. 57, 58; Nyssen. in Vita Greg. Thaum.; Ambros. de Offic. i. c. xxix.; Const. Ap. ii. 45, 49 seq.; Aug. de Op. Monac. c. xxix. n. 37). The *arbitri* could refuse to act, not so the bishops.

§ 2.

Constantine the Great, whose estimation of the bishops was so high,[1] not only acknowledged ecclesiastical jurisdiction in purely spiritual matters, but passed a law[2] by which, after the beginning of a civil law-suit, the parties concerned might leave the lay court of justice and appeal to the episcopal court (in this case a court of arbitration), against which, under such circumstances, no further appeal could be made.[3] By a later law[4] he even insisted that if one of the parties had appealed to the ecclesiastical court, the other should follow even against his will. Julian deprived the Christians of their privileges, but the succeeding emperors restored them, and in the course of time many changes took place as the ever-increasing weight of business became too heavy for the bishops.[5]

[1] Eus. Vita Const. iv. 27: *πιστὸν γὰρ εἶναι δικαστοῦ τοὺς ἱερεῖς τ*

δοκιμωτέρους (ἐπεσφραγίζετο). Rufin. H. E. i. 2. Thomassin, l.c. c. cii. n. 1 seq.

[2] Const. a. 321. Sirmond. Append. Cod. Theod. l. xvii. Opp. i. 736. Haenel, xviii. Constit. quas J. Sirmondus, a. 1631, divulgavit, Bonn, 1844, p. 475. Cf. Eus. l.c. Soz. H. E. i. 9.

[3] L. viii. 9, Cod. Just. i. 7 (last law of Arcadius and Honorius, 408).

[4] Const. a. 331, Ablavio Praef. Praet. Sirmond. l.c. p. 717. Haenel, p. 445 seq., partially apud Gratian, c. 35, c. xi. q. 1, after capit. vi. 281, and Conc. Valent. 855 (Labbé, ix. 1160, d.). Gothofredus, Loyseau, Eichhorn, and others, have disputed its authenticity, which has been defended on more convincing grounds by the following: Baron. a. 314, n. 33 seq.; Sirmond. in h.l. Vales, note in Eus. l.c.; Selden, Ux. hebr. l. iii. c. xxviii. de Synedr. i. 10; Cujacius ad Leg. 14, de dote prael.; Altesserra de jurisd. Eccles. Paris, 1705, l. i. c. vii.; Const. Constantini, de Episcopali Judicio vindicata, Tolos. 1672; Jean le Gendre, Episcopali Judicium adv. calumn. Gothofr. vindicatum, Paris, 1690; Bianchi, t. iv. l. ii. c. iv. § 10, n. 704 seq.; Haenel, l.c. Praef. de Const. quas J. Sirmondus edidit, Lips. 1840.

[5] Aug. de Op. Monac. c. xxix. n. 37: 'Multo mallem manibus aliquid operari, quam tumultuossissimas perplexitates causarum alienarum pati de negotiis secularibus *vel judicando dirimendis vel interveniendo praecidendis*. Quibus nos molestiis idem afflixit Apostolus, non utique suo, sed ejus, qui per eum loquebatur arbitrio.'

§ 3.

The Emperor Justinian fully recognised the independent spiritual jurisdiction in civil causes. In general it was left to the choice of the parties concerned whether they wished to have their civil causes decided by the bishops;[1] bishops and priests were obliged to bring their causes to the ecclesiastical authority immediately above them;[2] laymen could only sue ecclesiastics before the bishop.[3] As to criminal matters, in cases of slight offences committed by the clergy the inquiry rested with the bishop, who also had to take cognisance of any violations of their office or order;[4] in cases of more serious crime the accusation might be brought before spiritual or lay judges. In the first case the bishop deprived the offender of his office and dignity, and then delivered him over to the lay judge for further proceedings; but if the complainant went first to the lay judge —which could only be allowed to a layman—the offender would then be sent over to the bishop to undergo deposition and degradation, the acts of his trial having been handed over; if the

bishop did not agree to the verdict of the lay judge, both judges had then to refer to the emperor for a final decision.[5] In such a case both powers coöperated, and in this the Church had nothing to fear, since at that time both agreed to the same first principles. The State lent its aid in executing the sentences of the bishops,[6] whose power was by no means limited to the infliction of purely spiritual punishments. They had their own prisons (decanica), in which they could imprison the accused and condemned persons.[7] The use of corporal punishments was allowed,[8] fines might be inflicted,[9] and banishment pronounced.[10] Death was the only punishment they might not inflict.[11]

In the course of time many other changes were effected; for instance, in the Byzantine Empire, where, according to the prevailing idea of imperial omnipotence,[12] an exception was made in the case when any one appealed to the imperial tribunal; but still the free spiritual jurisdiction in principle remained the same.[13]

[1] L. xxix. § 4, Cod. Just. i. 4, de Episc. aud.

[2] Nov. 123, c. 8, 22.

[3] Nov. 79, 83, Praef. 123, c. 21. Phillips, Lehrb. d. K.R. § 175, p. 483 seq.

[4] Nov. 83, c. 1. Cf. Thomassin, l.c. c. ciii. n. 1 seq.; Bianchi, t. iv. p. 608.

[5] Nov. 83, Praef. § 2; Nov. 123, c. 21, § 1. Cf. Phillips, l.c. § 186, p. 524 seq.

[6] L. viii. Episcopale, Cod. i. 4, de Episc. aud.: 'Per judicum quoque officia, ne sit cassa episcopalis cognitio, definitioni executio tribuatur.' Cf. Bianchi, t. iv. l. ii. c. iv. § 9, n. 4, p. 683 seq.

[7] The Archimandrite Basilius and other monks complain to Theodosius II. in their petition (Conc. Eph. Labbé, iii. 976): *κἀκεῖθεν τυπτόμενοι ἀπηγόμεθα ἐν τῷ δεκανικῷ κἀκεῖ γυμνοὺς ἡμᾶς ὡς δημίους καὶ ὑπευθύνους τιμωρίᾳ ἐκόλασεν.* Cf. l. Arcad. et Honor. 396, in the Cod. Theod. de Haeret.; l. iii. Cuncti, C. Just. i. 5; Nov. 79, c. 3. Cf. Gothofred. Com. in l. xxx. C. Theod. de Haeret.; Ciron. l. ii. Observ. c. li. et in Rubr. de Offic. ord. Joh. a Costa, c. iv. Extravag. de Jud. Filesac, in c. i. de Off. ord. § 16. Bianchi, l.c. n. 7, p. 692.

[8] Aug. Ep. 133 (al. 159), ad Marcellin. n. 2. Cyprian, in Vita S. Cæsar Arel. ap. Surium, 27 Aug. t. iv. p. 927. Conc. Agath. 506, c. 38, 41; Matiscon. i. 581, c. 8; Narbon. 589, c. 13 (Hefele, Conc. ii. 638; iii. 33, 50 seq.). Pallad. Hist. Laus. c. vi. Gregory the Great, who (Ep. ad Joh. Defens. ii. 54, ed. Vet. c. 38, c. xi. q. 1) appeals to Nov. 123, decreed for the *sortilegi* that free men should be imprisoned and slaves should be beaten (l. ix. Ep. 65, ol. vii. 67), and decided that the Subdeacon Hilarius should be castigated publicly *verberibus*, and then banished (l. xi. Ep. 71, ol. ix. 66). Other examples, apud Thomassin, l.c. c. cii. n. 19.

[9] Conc. Carth. Labbé, ii. 1454. Aug. de un. Eccl. c. 17 (c. 35, c. xxiii. q. 5). Greg. M. l. iv. Ep. 26, ad Jan. Cal. Ep. 27. Cf. Salgado, de Reg. Protect. P. ii. c. iv.; Bianchi, l.c. n. 8, p. 694.

[10] Conc. Rom. Symmachi, Labbé, v. 504 (c. 3, c. iii. q. 5). Conc. Aurel. iv. 541, c. 29; Tolet. xii. 681, c. 11. Gonzalez, in c. i. de Calumn. v. n. 14. Bianchi, l.c. p. 693.

[11] Cf. Gerbert, de Legit. Eccl. Potest. l. iv. c. ii. n. 1 seq. p. 666 seq.; Molitor, Ueber canonisches Gerichtsverfahren, Mainz, 1856, p. 26 seq.

[12] Ἡ βασιλικὴ ἐξουσία πάντα δύναται ποιεῖν. Balsam, in Carthag. c. xv. (Migne, cxxviii. p. 73). Cf. Demetr. Chomaten. ad Const. Cabas. (Leunel. i. p. 317).

[13] Heractius gave on March 21, 629, to the bishops the exclusive jurisdiction over ecclesiastics both in civil and criminal matters. Voell. et Just, Bibl. Jur. Can. Vet. ii. 1361-1365. Leunclav. Jus. Gr. Rom. i. pp. 73-75. Syntagma Athen. ed. Rhalli et Potli, t. v. 225-229. Balsam, in Phot. Nomoc. ix. 1 (Migne, PP. gr. civ. p. 1093). Pitra, Jur. Eccl. gr. Mon. ii. p. 532, gives thus the tenor of the law: μήτε ἐπίσκοπος μήτε κληρικὸν μήτε μοναχὸν χρηματικῆς ἢ ἐγκληματικῆς χάριν αἰτίας παρὰ πολιτικῷ ἢ στρατιωτικῷ ἐνάγεσθαι ἄρχοντι, ἀλλὰ παρὰ μόνοις τοῖς ἰδίοις ἐπισκόποις ἢ μητροπολίταις ἢ πατριάρχαις.

§ 4.

In the German Empire also the Church gradually obtained complete exemption from the civil forum. With regard to the disputes of ecclesiastics amongst themselves the episcopal court was always competent; when otherwise, the class of the defendant determined the matter. But a priest was not allowed to carry any sort of complaint before a civil judge without the permission of the bishop, any more than a layman could carry a complaint against an ecclesiastic before a civil judge without this same permission.[1] Mixed tribunals (*tribunalia mixta*)[2] existed in the Frankish kingdom for a time; later on the bishop decided all causes of ecclesiastics. In Germany it was a principle in law that if possible every one should be judged by his own equals, and, moreover, on account of the peculiar position of the clerical order, the Church could better punish the offences of its members. In the time of Charles the Great ecclesiastical penal jurisdiction over the clergy was always final.[3] The extension of spiritual jurisdiction as it appears in the Middle Ages was a necessity, because the Church had to supplement the action of the State where the latter was either not in a position to fulfil its office, or allowed part of its func-

tions to be made over to the Church.[4] The spiritual jurisdiction, expressly recognised as it was by the emperors, even by Frederick II.[5] and Charles IV.,[6] was firmly maintained by Popes[7] and Councils.[8] All clerical causes belonged to the spiritual court,[9] and no priest could forego this right. Only feudal causes were consigned to the civil tribunal.[10] It was against all the notions of the period, and offensive to religious feeling, that laymen should sit in judgment upon the clergy. Tosi[11] says: 'Ecclesiastical immunity owes its origin to a religious feeling based on just grounds. The State may possibly oppose this feeling, but not without transgressing against natural reverence for religion and the Church, and even against common equity and gratitude, considering the immeasurable advantages it owes to the religious feelings of its members and to the effects of the influence of the clergy. Thus arose the general legal recognition of ecclesiastical immunity; and when thus recognised this immunity formed an acquired right for the Church, to be respected like any other right, and only to be altered with the consent of its possessor, the Church.'

[1] Conc. Agath. 506, c. 32; Epaon. 517, c. 11; Aurel. iii. 538, c. 32; iv. 541, c. 20; Autissid. 578, c. 35; Matiscon. i. 581, c. 8; ii. 585, c. 9, 10; Paris, v. 614, c. 4; Rhemens, 625, c. 6 (Hefele, ii. 637, 663, 756; iii. 42, 33, 37, 63, 69).

[2] Chlotar. Const. 614, c. 4. Pertz, iii. 14.

[3] Caroli M. Capitul. 789, c. 38 (Pertz, iii. 60): 'Ut clerici et ecclesiastici ordines, si culpam incurrerint, apud ecclesiasticos judicentur non apud saeculares.' Capitul. Francof. 794, c. 39; Capit. Longob. 803, c. 12 (Pertz, l.c. pp. 74, 110); Capit. v. 137; vi. 155.

[4] Phillips, Lehrb. d. K.R. § 175, p. 478. Cf. Thomassin, l.c. c. cv. seq.

[5] Frid. II. Auth. Statuimus, ad 1, 33, Cod. Just. i. 3 (Pertz, iv. 244): 'Statuimus, ut nullus ecclesiasticam personam in criminali quaestione vel civili trahere ad judicium saeculare praesumat contra constitutiones imperiales et canonicas sanctiones. Quod si actor fecerit, a jure suo cadat, judicatum non teneat et judex ex tunc potestate judicandi privetur.' Cf. Raumer, Gesch. d. Hohenstaufen, iii. p. 350; Phillips, Lehrb. p. 486, No. 6.

[6] Cf. Card. Petra, Com. in Constit. Apost.; in Const. iv. Boniface IX. Justis, et Urbani VI. Const. Quia sicut, t. iv. pp. 189 seq. 198 seq.

[7] Alex. III. Ep. 350, ad Henric. Angl. Reg. p. 375, ed. Migne: 'Sicut clerici a viris saecularibus vita et habitu distinguuntur, ita et judicia clericorum a laicorum judiciis diversa penitus comprobantur.' Innoc. III. l. ii. Ep. 162, Capitulo et Clero de Matera, p. 714: 'Ordinis clericalis immu-

nitas eo est libertatis privilegio insignita, ut cum suos judices habeat, sub quibus possit et debeat conveniri, a saeculari judicio penitus sit exemta, quae nimirum nullis publicarum functionum oneribus obligata jugum saecularis effugit servitutis.' Ep. 163, ad Popul. de Matera: 'Cum (clerici) secundum Apostolum suo Domino stent aut cadant.' Cf. Urban II. ap. Thomassin, P. ii. l. iii. c. cxii. n. 4; likewise c. xvii. d. 28 (Nicol. I.); c. vii. d. 97; c. i. 2; c. xxi. q. 5.

[8] Council of Nîmes, 1096, c. 14 (Mansi, xx. 936; cf. Hefele, v. p. 220): 'Nec clericos nec monachos in curiam suam ad saeculare ullus cogat venire judicium, quoniam hoc rapina esset et sacrilegium.' Lateran, iii. 1179, c. 14 (Mansi, xxii. 226; Hefele, p. 635). Synod of Lambeth, 1261, c. 1, 4, 5, 7-10; of Cologne, 1266, c. 11, 13, 18; of Seyne, 1267, c. 7; of Bourges, 1276, c. 6, 7; of Angers, 1279, c. 1 (Hefele, vi. pp. 59, 79, 95, 159, 180), &c.

[9] This had competence not merely *ratione materiae*, but also *ratione personae*. The Popes knew the distinction of 'causae, quae ratione personarum aut rerum de jure aut antiqua consuetudine ad forum ecclesiasticum pertinent' (c. iv. Quoniam, iii. 23, de Immunit. Eccl. in 6).

[10] Alex. III. c. vi. et vii. de foro Compet. ii. 2. Conc. Constant. 1463. Hartzheim, v. 45.

[11] Vorlesungen über den Syllabus, Vienna, 1865, pp. 91, 92.

§ 5.

We are told that in contrast with the Middle Ages the early Church under the Roman emperors never disputed the jurisdiction of the State over civil offences of the clergy.[1] This statement is disproved by the testimony of the Fathers and the Councils; and regarding the civil laws in this connection, there is no foundation for representing the early emperors as *always* subjecting all the civil delinquencies of the clergy absolutely and even exclusively to the civil court.[2] We see the Church continually striving to bring the criminal causes of ecclesiastics before her own tribunal, but in serious cases the co-operation of the civil power has often been very welcome to her.[3]

[1] Huber, p. 12.

[2] Cf. also Devoti, Inst. Jur. Can. l. iv. tit. 1, § 10, n. 1-5.

[3] If we are further assured that the mediæval canonists, and after them even Baronius, endeavoured to hide inconvenient facts by means of forgeries, we must especially remember that they at least did not forge the *corpus juris*, but guarded it intact; that the Pseudo-Isidore forgeries merely attribute to Popes of the first three centuries what was said by Councils of the fourth and fifth—c. 1, Nemo (Cajus P.); c. 3, Clericum (Marcellin.); c. 7, Quacunque (id.); c. xi. q. 1, c. 14, Relatum (Alex. I.) ib.; that the Capitularies of Charles the Great existed and were in use long before Pseudo-Isidore, and that the genuineness of the extracts therein taken

from the Codex Theodosianus has to this day not been disproved—c. Continua lege, c. et q. cit. (1, 3, de Episc. Judic. post Cod. Theod.). Testimony to the authenticity is given by Legendre, l.c. c. ii. n. 5; Bianchi, l.c. c. iv. § 8, n. 4, p. 666 seq. Gratian follows Anselm (iii. 109) and Polycarp (i. tit. 19).

§ 6.

But this exemption from the civil courts has, we are told, helped to make the clergy intractable and uncivilised. Should then this exemption never have arisen, or, if existing, have been abolished in the midst of general barbarism and feudal anarchy? Considering what the civil courts then were, would not the clergy have become rather more than less intractable and uncivilised by being compelled to appear before them? Were the clergy to be tried by judicial combat and ordeal?[1] Cases actually occurred when civil magistrates wished to force the clergy to take part in the judicial combat.[2] Several Synods have forbidden ecclesiastics to be brought for trial before a civil court on the ground that the means of proving innocence or guilt, for instance the red-hot iron, were barbarous and superstitious.[3] At a time when civil administration of justice was so deficient, rude, and uncivilised[4] that the Church had to come to its assistance, barbarism would have grown apace if the priests, who were almost the only persons of any high degree of cultivation, had in all penal cases been subjected to the civil judges of the time.

[1] Walter, K.R. § 190, p. 343 seq.

[2] Pauli, Geschichte Englands, iii. p. 144.

[3] Mansi, xxii. 702, c. v. Other Synods forbade all combats to ecclesiastics (Council of Noyon, 1344, c. 1, 3; Mansi, xxvi. 4; Hefele, vi. 591), as well as the arrest and trial of ecclesiastics to civil judges (Council of Rouen, 1231, c. 28; of Paris, 1347, c. 1; London, 1321, c. 5; Mansi, xxiii. 217; xxv. 676; xxvi. 4; Hefele, v. 896 seq.; vi. pp. 503, 531), &c. Popes were unwilling for ecclesiastics to be present at ordeals or to bless them. Innoc. III. l. vii. Ep. 113, p. 344, complains: 'Cumque candentis ferri et aquae frigidae ac similia judicia lex canonica non admittat, benedicere ac interesse talibus compelluntur miseri sacerdotes.'

[4] Cf. the Protestant canonist Dove, de Jurisdictionis Ecclesiasticae apud Germanos Gallosque progressu, Berol. 1855, esp. pp. 23 seq. 70 seq. Upon the state of things in England, cf. Chron. Roger. et Matth. Paris, Mansi, xxi. 603, 604; Council of London, 1138, c. 10, ib. p. 512; Thomassin,

P. i. l. ii. c. xiii. Hausmann, Gesch. der Päpstl. Reservatfälle, p. 63 seq., gives much information.

§ 7.

The procedure of the spiritual court, the mildness of the punishments inflicted on ecclesiastical offenders, who were even sometimes left altogether unpunished,[1] is an especial source of offence. As an example of the 'extensive use which the Popes made of this immunity, which nominally was for the freedom of the Church,' we are referred to a well-known Decretal of Celestine III.,[2] the substance of which is that ecclesiastics convicted of murder or theft (or perjury) should be degraded (deposed), and in case they did not amend, excommunicated (Huber puts 'excluded from the Sacraments'); if in spite of that they continued to be obdurate, they should be anathematised; and then at last, if this wrought no change of mind, they should be delivered over by the Church to the civil tribunal to be punished [then had they not already suffered any punishment?]. On this it is remarked: 'So it appears that an ecclesiastic who was a murderer or a thief could only receive capital punishment [from a civil judge] after he had relapsed *three* times. Such an administration of justice induces the supposition, that crimes for which laymen have to suffer death [what, even for every theft?] are less grievous when committed by the clergy.' Let us look closer at the Decretal. Its primary object is to maintain, according to the existing spiritual and civil law, the ecclesiastical jurisdiction over all the clergy in its integrity as long as the Church had sufficient means at her disposal to keep them within bounds.[3] These means were only too many in the opinion of Professor Huber, as it appears from expressions he has used in another place.[4] The Decretal orders the deposition of any ecclesiastic who was guilty of manslaughter (simple manslaughter not qualified),[5] theft, or perjury, in accordance with the older decisions.[6] Huber either did not know or overlooked the fact that the most ancient canons of the Eastern Church for one and the same crime punished the laity with excommunication, the clergy with deposition.[7] The latter was a very severe punishment, far more severe than excommunication was to the laity.

It commonly involved the loss of temporal means of subsistence and personal status. It was the ancient ecclesiastical punishment for the clergy, and since the earliest times of the Church the axiom was held to: 'Ne bis in idem' (Neh. i. 9);[8] *i.e.* the same offence is not to receive two punishments. Deposition and excommunication was a double punishment, to be inflicted therefore only when great severity was necessary. As a second punishment for those who were found to be incorrigible excommunication was added, according to the old rule not only of the Popes, but also of the Synods;[9] this entailed not only exclusion from the Sacraments, but also—until the later modifications we have already mentioned—from all social intercourse. If this were fruitless the case, as a last and extreme measure, was delivered over to the civil power.[10] Further, the Decretal does not presuppose the repetition of the offence—a relapse—but only the incorrigible and stubborn state of the offender; there is no mention of a relapse. Later laws have ordained that a guilty ecclesiastic should be immediately made over to the civil court[11] in case of certain offences; they were opposed to the earlier practice, which was founded on a strict sense of justice.

[1] Innoc. III. l. vi. Ep. 183, to the Archbishop of Lund, 1203: 'Quod cum praelati excessus corrigere debeant subditorum et publicae auctoritatis intersit, ne crimina remaneant impunita et per impunitatis audaciam fiant, qui nequam fuerant, nequiores: non solum possunt, sed etiam debent superiores clericos illos postquam fuerint de crimine canonice condemnati, sub arcta custodia detinere,' &c.

[2] C. 10, Cum non ab homine, ii. 1, de Judic.

[3] This is shown in the context by the words, 'cum Ecclesia ultra non habeat quod faciat.'

[4] Huber, pp. 75, 85.

[5] Reiffenstuel, in l. ii. tit 1, § 2, n. 6: 'Ob unum *simplex* (non qualificatum) homicidium curiae saeculari tradi non possit.'

[6] Bernard. Papiensis Summa Decretal. l. v. tit. 10, § 7, p. 223 (ed. Laspeyres, Ratisb. 1860): 'Poena homicidii voluntarii est secundum leges, ut sublimiores deportentur, omnibus bonis ademtis, minores capite puniantur, ut Dig. ad Leg. Cornel. de Sicar. l. iii. § Legis (§ 5) et l. penult.; secundum canones autem clericus deponitur, laicus excommunicatur, ut dist. l. c. Si quis viduam (8) et c. Si quis voluntarie (44), ex Martino Brac.'

[7] Can. Apost. 32, 63, 64-66, 69, 70, 84 (al. 30, 62, 63-65, 68, 69, 83); Eph. c. 6; Chalc. c. 2, 8, 27 (Hefele, i. pp. 783, 793 seq. 799; ii. 194, 487, 493, 508). The third Synod of Orleans, 538, c. 8 (Hefele, ii. p.

754), decreed: 'A cleric guilty of theft or forgery shall be degraded from his order, but not excommunicated; one guilty of perjury shall be excommunicated for two years.' Also Aug. Enchirid. c. lxxx. presupposes the two punishments as parallel for the two classes: 'Multa mala . . . in apertam consuetudinem jam venerunt, ut pro his non solum excommunicare aliquem laicum non audeamus, sed nec clericum degradare.' Cf. Bingham, Orig. et Ant. Eccl. l. xvii. c. § 51; Kober, Die Suspension, Tübingen, 1862, p. 5 seq.

[8] Already Can. Ap. 25 (al. 24, Hefele, i. p. 781) appeals to this; likewise Basilius, Ep. 188, c. 3 (Migne, PP. gr. xxxii. 672); also Balsamon, in c. 1, Neocaes. (ib. t. cxxxvii. p. 1197). The same in Basil, can. 51 (ib. cxxxviii. 737), designates the ἔκπτωσις τῆς ὑπηρεσίας as properly the punishment for clerics.

[9] Already Can. Ap. 29 (al. 27, Hefele, i. p. 782) decrees: 'A bishop, priest, or deacon deposed for some crime who shall venture again to exercise his office is to be entirely excluded from the Church.' Likewise Conc. Ant. 341, c. 4 (Hefele, i. 495), &c.

[10] This is treated, c. 18, Si quis, c. xi. q. 1; c. 43, De Ligaribus, c. xxiii. q. 5; Innoc. III. c. 27, de V. S. V. 40.

[11] Reiffenstuel, in l. ii. tit. 1, § 4, n. 112, 113.

§ 8.

The charge has been renewed[1] against Alexander III. of declaring adultery to be a slight sin, and that no priest ought to be deposed or even suspended by his bishop on account of it. The passage on which this charge is founded has been mistranslated by Huber,[2] and no regard has been paid to the arguments already brought forward by Scheeben and Merkle[3] against this calumny. Alexander III. himself declares that a priest convicted of adultery must be removed from his office;[4] and in the letters here in question to the Archbishop of Salerno, Alexander III., far from abolishing this rule, presupposes it. The guilty ecclesiastics lost their office at the beginning of their penance, and during its continuance they could neither practise nor receive any such office; but the question was whether, after the penance was accomplished, pardon might be granted, especially when complete amendment had taken place in the delinquent. In cases of adultery[5] and other crimes, less serious than murder and sins against God,[6] a bishop *can* dispense ecclesiastics[7] *after the completion of their penance*, and *need not* therefore permanently exclude them from office; but having de-

posed a criminal, he is not obliged to make him over immediately to the civil power. The passage in question contains nothing more. Alexander III. was in truth very severe upon such crimes, though he could be lenient when occasion required.

[1] Huber, p. 13. The charge was first made in the Allgemeine Zeitung, 13th March 1869. Cf. Anti-Janus, p. 15.

[2] In the Decretal the words *cum clericis* belong not to *episcopus* but to *dispensare*. In the language of the Church, *dispensare cum aliquo* means to dispense any one, *e.g.* c. 1, de Cler. Pugn. in Duello, v. 14: 'si cum ipso (sc. clerico) episcopus duxerit misericorditer dispensandum.' Huber's mistranslation has arisen from total ignorance of ecclesiastical terminology.

[3] An article by the latter in the Augsb. Pastoralblatt of the 15th May 1869 was referred to in Anti-Janus, note 17.

[4] C. Significasti, v. de Adult. v. 16, to the Bishop of Chartres, Mansi, xxii. 434; Ant. Augustin. Opp. iv. 310; Jaffé, Reg. ap. Migne, cc. p. 1321.

[5] This is the case in point, c. 4, At si clerici, § 1, de Adulteriis vero, ii. 1, de Judic.

[6] Cf. c. 16, xxxii. q. 7: 'Quid in omnibus peccatis adulterio est gravius? *Secundum* namque in poenis obtinet *locum*, quoniam *primum* illi habent, qui aberrent a Deo, etsi sobrie vixerint.'

[7] In books of canon law as a rule the word *clerici* by itself means those in minor orders, while those in greater orders are generally given their proper names. Permaneder, K.R. § 124, p. 206, 2d ed.

Part II. Ecclesiastical Jurisdiction since the Thirteenth and Fourteenth Centuries.

§ 1. Encroachments upon ecclesiastical jurisdiction. § 2. England. § 3. Germany. § 4. France. § 5. Spain and Italy. § 6. Reason of the dislike to special courts for the clergy. § 7. Complaints with regard to ecclesiastical jurisdiction over the laity. § 8. Ecclesiastical right of sanctuary and its modifications. § 9. Later Concordats. § 10. Possible revival of former claims.

§ 1.

After the Ghibelline wars of the thirteenth century the magistrates in the Italian towns set themselves in opposition to the clergy and their immunities.[1] Several Synods of the thirteenth and fourteenth centuries complained of such interference,[2] which was becoming more common and more oppressive,[3] especially since the provincial Councils had been held less often.[4]

Contrary to imperial and Papal laws, the civil and even the criminal causes of the clergy were committed to civil judges.[5] Priests and even bishops were often arbitrarily ill-treated, their relations imprisoned, and fines inflicted on those who wished to take their causes before spiritual courts.

[1] The town of Parma in 1220 would allow no justice to be done to any priest if he would not present himself before the civil judge. Raumer, Gesch. der Hohenstaufen, vol. iii. p. 341.

[2] *E.g.* the Council of Avignon, 1279; of Valladolid, 1322, c. 3; Avignon, 1326, c. 8-10; Noyon, 1344 (Hefele, vi. 168, 533, 540, 591 seq.), and others.

[3] Petrus Bles. Ep. 27, p. 95: 'Irruunt laici in sancta sanctorum; sanctuarii vero lapides disperguntur in capite omnium platearum.'

[4] Thomassin, P. ii. l. iii. c. cx. n. 12. Affre, Appel comme d'Abus, p. 60.

[5] Friedberg, de fin. &c. pp. 141, 143 seq. Cf. also Hausmann, Gesch. der Päpstlichen Reservatfälle, pp. 170 seq. 178 seq.; Ecclesiasticae jurisdictionis vindiciae advers. Caroli Feureti et aliorum tract. de abusu susceptae ab Ant. D. Alteserra, U.J. Prof. et Dec. Univ. Tolos. Paris, 1702, 4, P. i. l. i. c. iv. v. p. 10 seq.

§ 2.

In England, Henry II. endeavoured to abolish altogether the independent spiritual courts.[1] The clergy themselves were under certain disadvantages through the milder punishments inflicted by the ecclesiastical courts, to which laymen in ecclesiastical crimes were subject. Even the murderers of St. Thomas were not executed;[2] those who murdered any of the clergy were only excommunicated, while the murderer of a layman expiated his crime by death.[3] The civil judges used many pretexts to draw the clergy before their tribunals. Nevertheless Edward II. (1307-1327) restored great privileges to the spiritual courts, and Edward III. fully recognised the jurisdiction of the Church over the clergy in criminal matters.[4] But in the fifteenth century the inconveniences increased. A Synod held at York in 1466 complained of the ill-treatment of those who sought to bring their cause before the spiritual courts;[5] and Pope Sixtus IV. renewed, in 1476, the ecclesiastical prohibition to sue clergy before civil judges.[6]

[1] Hefele, Conc. v. p. 548 seq. He especially used for this object the

rights he had obtained for the crown (cf. Joh. Saresb. Ep. 145, ad Barthol. Exon. p. 135, and elsewhere). After the murder of St. Thomas of Canterbury he was, however, obliged to relinquish them (1172), Hefele, l.c. p. 611 seq.

[2] Petrus Bles. tract. de Institut. Episcop. Migne, ccvii. p. 1110.

[3] This difference of treatment led to the murder of ecclesiastics being very frequent. Archbishop Richard of Canterbury wrote about it to his suffragans, and even moved that murderers of the clergy should be committed before civil judges, that the civil sword might supply for the deficiencies of the spiritual (Petr. Bles. Ep. 73; ib. p. 224 seq.: 'Ecclesia jurisdictionem suam prius exerceat et si illa non sufficit, ejus imperfectum suppleat gladius materialis'). He held this no violation of the old axiom: *Ne bis in idipsum* (ib.: 'Non enim iteratum videtur, quod ab uno incipitur et ab altero consummatur'). This was accomplished, and then soon in other matters spiritual jurisdiction was much curtailed.

[4] Lingard, History of England, vol. iii. chap. iii.

[5] Hard. Conc. ix. p. 1481.

[6] Hard. l.c. p. 1496. Roscovány, Monum. i. pp. 115-117.

§ 3.

In Germany the principle of making over clerical offenders, who were imprisoned, to their bishops was constantly enjoined.[1] The Synod of Würzburg (1287) increased the severity of the punishments for imprisoning and ill-treating ecclesiastics, and desired that if the priest was not set free within eight days the place of his imprisonment should be laid under an interdict.[2] Still more severe punishments were determined upon at Aschaffenburg (1291) for the imprisoning and mutilating the clergy, which extended to the descendants of those who had been guilty of such crimes.[3] In Germany ecclesiastical jurisdiction was in general more respected than in other countries;[4] for the most part it was only the lesser territorial magnates and towns who interfered with it;[5] but in the fifteenth century interference became more frequent and important, for which reason several Synods, such as those held at Salzburg in 1420, Freising, 1440, and Mainz, 1549, protested against it.[6] In the last period of the old German Empire the circle of lay jurisdiction was enlarged at the expense of clerical jurisdiction.[7] The strict Constitution drawn up by Martin V.[8] against such extension of civil jurisdiction, from which even causes of a purely ecclesiastical character were not exempted, did not have the desired effect. Ecclesiastics, even those in the

highest positions in the Church, were constantly imprisoned by the civil power.[9]

[1] Friedrich II. 1220 (Pertz, iv. 244); his son Henry, 1234 (ib. p. 302); Rudolph I. 1281, 1287 (ib. pp. 429, 450); peace of 1495, &c. (apud Friedberg, p. 133, note 3).

[2] Hefele, Conc. vi. p. 221. In 1260 the Synod of Fritzler had for the archdiaconate in question prescribed a *cessatio a divinis* in such cases (ib. p. 53). Likewise did the Synods of Magdeburg, 1261, c. 6 seq.; of Cologne, 1266, c. 1, 18; of Vienna, 1267, c. 5; of Salzburg, 1291, c. 13 (ib. pp. 70, 77 seq. 89 seq. 195).

[3] C. 14, 15. Hefele, l.c. p. 248. Similarly in the Council of Mainz, 1261, c. 43 (ib. p. 66).

[4] Thomassin, P. ii. l. iii. c. cxiii. n. 4.

[5] Friedberg, pp. 149, 150.

[6] Thomassin, l.c.

[7] Warnkönig, Die staatsrechtliche Stellung der Kath. Kirche, Erlangen. 1855, p. 109 seq.

[8] Martin V. Const. 10, Ad reprimandas, a. 1428.

[9] The canonist Pignatelli gives, together with several legal documents, details upon the imprisonment of Cardinal Clesel in 1618. Consultat. Canon. t. ii. Cons. 63, n. 16-30, p. 129 seq.

§ 4.

From the fourteenth century the spiritual jurisdiction in France was growing more contracted.[1] There also Synods had several struggles against the impediments raised by civil magistrates[2] to the exercise of spiritual justice, against the imprisonment of ecclesiastics,[3] against the difficulties or impediments made to the right of appeal to an ecclesiastical judge.[4] The *appel d'abus*[5]—appeal against the abuse of spiritual authority—was introduced, the clergy and even bishops were prosecuted by civil judges.[6] The jurists invented a distinction between the *common* and *privileged* criminal causes of the clergy; in cases of the former they were left to the jurisdiction of the Church, but in cases of the latter they were carried before a civil court. 'Their interpretation of the distinction, however, gradually led to this, that all cases of discipline were declared to be "common transgressions," but all more grievous cases were to be treated as "privileged transgressions." At last the principle was reversed, and the so-called common law became the exception, and the privileged law became the rule.'[7] Several Synods, such as those of Rouen, 1581, Rheims, 1583, Bourges,

1584, and Narbonne, 1609, declared themselves emphatically in favour of ecclesiastical jurisdiction, and the edict published by desire of the clergy defended it against the innovations of civil magistrates.[8] That the civil courts should assist the spiritual courts in the execution of their sentences was still recognised in France in the seventeenth century, and was quite in accordance with earlier legislation.[9] The parliament, however, soon endeavoured to extend its cognisance to every judicial cause, even though purely spiritual, which resulted in great confusion and uncertainty.[10] As early as 1463, Charles VII. was obliged to see that the limits of parliamentary jurisdiction drawn up in the Pragmatic Sanction of 1438 were kept, and in the times that followed the French kings often had by new measures to oppose the arbitrary will of the parliament, which assumed everything to itself.[11]

[1] Thomassin, l.c. c. cxii. n. 7 seq.

[2] *E.g.* Council of Tours, 1282, c. 7; of Notre Dame du Pré near Rouen, 1313, c. 4-8 (Hefele, vi. 201 seq. 498).

[3] Council of Macon, 1286, c. 2; Council of Nogaret, 1290; Council of Marciac, 1326, c. 52 (Hefele, vi. pp. 211, 232 seq. 548).

[4] Council of Anse, 1300, c. 17 (Hefele, l.c. p. 399). Several Synods of the sixteenth century (apud Roscovány, Mon. t. i. pp. 178-180).

[5] 'From Peter de Cugnières French jurists date the proceedings on account of misuse of ecclesiastical authority, proceedings by which the judicial supremacy of the State over the Church was asserted' (Bluntschli, p. 73). Friedberg, p. 152, note 4, places the introduction at 1385. Cf. Altesema, op. cit. P. ii. l. viii. c. viii. seq. Affre, De l'Appel comme d'abus, Paris, 1845, defends, pp. 68-78, the view that this appeal first arose in 1438. Cf. p. 332, note 7.

[6] This was complained of at the fifth Council of the Lateran. Hard. Conc. ix. p. 1776. Cf. Thomassin, l.c. n. 12. As in England, bishops received the movable property of condemned ecclesiastics, and the king the immovable property (Ord. Phil. III. 1274, c. 5; Friedberg, p. 138).

[7] Bluntschli, pp. 67, 68.

[8] Thomassin, l.c. n. 14.

[9] Edict of Blois, 1610, art. 5: 'Les juges séculiers doivent prêter assistance et main forte à l'exécution des sentences des juges de l'Eglise, sans pour ce entrer en aucune connaissance des oppositions prétendues formées à leur dicte assistance requise.' Likewise the Ordonnance of 1629, art. 31, and others (apud Pey, vol. ii. p. 502 seq.).

[10] Cf. G. de Champagny, Recueil général du droit civ. ecclés. français, 2d ed. Paris, 1854, P. i.; Beidtel, Das Canonisches Recht, p. 200 seq., and elsewhere.

[11] Friedberg, in Dove's Ztschr. f. K.R. iii. pp. 85, 87 seq.

§ 5.

The personal immunity of the clergy was maintained longer in Spain and Italy than in other States; but there, as elsewhere, certain cases were recognised in which a civil judge might arrest an ecclesiastic, as, for instance, when taken *in flagranti*.[1] Here also Synods upheld independent jurisdiction of the clergy, and protested against its violation.[2] In the kingdom of Spain the civil power interfered in many spiritual judicial causes,[3] at the same time recognising ecclesiastical principles. Nevertheless, the tribunal of the Nunciature[4] was, with some restrictions, still recognised in the eighteenth century.[5] Conflicts were not wanting either here or in Italy.[6]

In many things the Church was very compliant; for instance, in 1741 great concessions were made to the Neapolitan Government.[7] The immunity enjoined by the Council of Trent was maintained by the Church against great misuse and violation of spiritual rights, and protected by spiritual punishments.[8] When it was violently and arbitrarily abolished by the Liberals without any previous consultation with the Holy See, then the Pope protested, and had a right to protest.[8]

[1] Thomassin, l.c. c. cxiii. n. 5 seq.

[2] *E.g.* Council of Milan, 1287, c. 7; of Bergamo, 1311, c. 13; of Padua, 1350, c. 11 (Hefele, vi. 226, 457, 603 seq.); Provincial Council of Naples, 1699, tit. 12 (Collectio Lacensis, vol. i. p. 236).

[3] Archiv f. Kath. K.R. vol. x. p. 23 seq.

[4] Ib. p. 30. It could not, however, take cognisance in the first instance to the prejudice of the ordinaries, nor proceed against the officials of the Inquisition. Pignatelli, Consult. Can. t. viii. Cons. 121, pp. 199, 200; Cons. 129, n. 9, p. 206.

[5] Concordat of 1737, art. 20 (Archiv, l.c. p. 211); Brief of March 26, 1771 (ib. vol. xi. pp. 375 seq. 395 seq.).

[6] Such arose especially with the Republics of Genoa and Venice, which brought ecclesiastics guilty of the so-called *delicta atrocia privilegiata* (according to the French theory) before the civil courts, and in many ways encroached upon ancient ecclesiastical privileges. An interesting opinion upon a similar decree is to be found apud Pignatelli, t. viii. Cons. 40, p. 61 seq. ed. 1688. The obligation of civil authority to lend the *brachium saeculare* to the Church was in general perfectly acknowledged. Carvajal, de Judiciis, disput. 2, 97, n. 76. Vultejus, de Judic. l. iii. c. xiii. Salcedo, Prax. Jud. c. cl. n. 9, 10. Gonzalez, in l. i. Decret. tit. 31, c. i. n. 18. Fagnan, in h.l.

[7] Concordato di S. Santita col Regno di Napoli, 2 Guigno 1741, capo iii. 55.

[8] Hausmann, Geschichte der päpstlichen Reservatfälle, pp. 170-189, gives much good material.

[9] *E.g.* in New Granada. The Allocution of 27th September 1852 complained of it.

§ 6.

The majority of our contemporaries have no longer any liking for a special court to judge the clergy, because they no longer appreciate the importance of the clergy. The distinction between clergy and laity, so odious to many infidels, is like to that between rulers and subjects, teachers and learners.[1] The False Decretals were not needed to refer back this distinction to the authority of St. Peter;[2] it has existed from the earliest Christian times, as even learned Protestants, Bingham in particular, have authenticated.[3] Neither is it true that the clergy were only regarded as men of the spirit, and the laity only as men of the flesh; the Church had long rejected the Gnostic distinction between pneumatics and sarcics.

However bad a prince may be, still, in consideration of his office, he has a higher dignity than the best of his subjects. So it is also with priests; they are raised above the laity by reason of their sacerdotal dignity and the indelible character of their ordination; they alone administer the Sacraments; but by no means does it follow that good people who are not priests will have a lower position in the Kingdom of Heaven than bad priests. Those who think the high position of the clergy only 'spiritual pride' forget that Christ, the Head of the Church, according to Holy Scripture (Eph. i. 22; v. 23; Col. i. 18) appointed those and their successors to be His representatives to whom He said, 'As the Father hath sent Me, I also send you' (John xx. 21). There can be no pride in exercising a conferred power. The ecclesiastical system, founded as it is on Scripture and tradition, must be utterly rejected if reproaches such as these are to be made against the Catholic Church.[4] In consideration of the important duties of the priesthood, the exalted character of its mission and position, all nations looked upon it as natural and fitting that priests should be subject only to a tri-

bunal of their equals; in the priesthood they honoured the representatives of religion; they acknowledged such an arrangement as in accordance with the will and laws of God.[5] If the civil power appropriated anything belonging to the ecclesiastical, it was looked upon as robbery and sacrilege.[6]

[1] Phillips, K.R. i. § 33, p. 276 seq.

[2] Bluntschli, l.c. in Sybel's Zeitschr. 1861, p. 54.

[3] Bingham, Antiquit. et Origin. Eccles. Lond. 1708, t. i. l. ii. c. i. § 2. Cf. also Rudelbach, Ztschr. für Ges. Luth. Theologie u. Kirche, 1845, ii. p. 106 seq.; Guericke, Archäologie, § 7, p. 20 seq. The expressions are well known (apud Clem. Rom. Ep. 1, ad Cor. c. xl.: ὁ λαϊκὸς ἄνθρωπος, apud Orig. hom. 7 et 11, in Jerem.; Tert. de Praescr. c. xli.; Clem. Strom. vi. p. 793, ed. Oxon.; Paed. iii. 12). Cf. Thomassin, P. i. l. i. c. li-liii.

[4] The election of some to spiritual dignities by no means implies the reprobation of all others. Aug. Civ. Dei, l. vii. c. i.: 'Et cum eliguntur in Ecclesia, qui fiant praepositi, non utique ceteri reprobantur, cum omnes boni fideles electi merito nuncupentur. Eliguntur in aedificio lapides angulares, non reprobatis ceteris, qui structurae partibus aliis deputantur. Eliguntur uvae ad vescendum, nec reprobantur aliae, quas relinquimus ab bibendum. Non opus est multa percurrere, cum res in aperto sit.' The general interior priesthood of all Christians, as the Scripture teaches it (1 Pet. ii. 5, 9; Apoc. v. 10; xx. 6; Exod. xix. 6), is also acknowledged by the Church (Aug. de Civ. Dei, xx. 10; cf. Const. Ap. iii. 15), but is as little as under the old law in opposition to the particular exterior priesthood.

[5] Cf. Hirschel, in the Archiv f. K.R. 1862, vol. vii. p. 202 seq. Cf. also Schneemann, in the Laacher Stimmen über die Encyclica, vii. p. 73 seq. § 82 seq.

[6] Petr. Bles. in Dial. inter Henric. II. Reg. et Abbat. Bonevallis, p. 984: 'Rapina, imo sacrilegium est, quidquid in rebus ecclesiasticis potestas civilis usurpat.'

§ 7.

Those who attack the extension of ecclesiastical jurisdiction over the laity overlook the facts: (1) that in general this jurisdiction over the laity existed only in ecclesiastical causes;[1] (2) that the Church has very often exerted a salutary influence on the interests of the State, and by so doing has earned for herself a right of jurisdiction, not only in civil[2] but also in criminal matters.[3] The Church was the first to legislate against several grave violations of morality, and the State laws were only due to her influence and example.[4] The Church refined the rude

notions of law, raised the State on a Christian foundation, and imbued it with Christian principles.

[1] 'When otherwise it was only founded upon custom and particular circumstances, and the clergy were forbidden to encroach upon the domain of the civil judges. Conc. Later. iv. c. 42: 'Sicut volumus, ut jura clericorum non usurpent laici, ita velle debemus, ne clerici jura sibi vindicent laicorum. Quocirca universis clericis interdicimus, ne quis praetextu ecclesiasticae libertatis suam de cetero jurisdictionem extendat in praejudicium justitiae saecularis, sed contentus existat constitutionibus scriptis et consuetudinibus hactenus approbatis, ut quae sunt Caesaris, reddantur Caesari, et quae sunt Dei, Deo recta distributione reddantur.'

[2] Mittermaier, Grunds. des deutschen Privatrechts, 7th ed. i. p. 43.

[3] 'The jurisdiction of the Church in criminal matters,' says Abegg (Die verschiedenen Strafrechtstheorien, pp. 106-108), 'has had especially in the Middle Ages a substantial importance and a beneficial influence upon the State and legislation. In its results it must still be acknowledged and not set aside with the remark that its theocratic character makes it no longer useful to us.'

[4] The Synod of Montpellier, 1195, c. 3, found it necessary to oblige the bishops to engage civil rulers under threat of excommunication to take steps against bands of robbers and pirates. Mansi, xii. 668; Hefele, v. p. 672. It follows from Innocent III. (Const. 12, Ad liberandam terram sanctam, Bull. M. i. 62), that civil potentates often through negligence, often even from a secret understanding, favoured robbery and piracy. Civil authority was especially slow in punishing acts of violence against ecclesiastics, for it often committed them itself; the Church was therefore obliged to help herself as she could (Hausmann, l.c. p. 104).

§ 8.

Ecclesiastical right of sanctuary, originally acknowledged by all[1] and resolutely defended by the bishops,[2] was attacked in course of time, when it was found not to fit with the new ideas of the functions and power of the State. The Popes have acceded to the request of rulers in granting limitations for particular countries, to suit the exigences of the times.[3] Gregory XVI. is much blamed for having withdrawn concessions made on this point by several of his predecessors.[4]

The accusation is specially directed against the Bull 'Cum alias' of 1591.[5] The principal object of the Bull was to meet the evils which had arisen on account of differences in the concessions granted by Pius V. and Sixtus V., and it met them completely, partly by following the old canon law and

partly by extending its limits.[6] In spite of the opposition of some Italian governments, which, however, was soon withdrawn,[7] it was accepted by the faithful with universal joy and satisfaction.[8] It is quite untrue that by Gregory's Bull murder was only to be refused right of sanctuary when it had been committed in a consecrated place.[9] In this, as in all her jurisdiction, the Church has always complied with well-grounded remonstrances of governments. The restrictions laid upon the right of sanctuary in the States of the Church since the time of Gregory XIV. were in 1737 extended to Spain by Clement XII., and in 1741 and 1742 to Naples and Sardinia.[10] Clement XIV. limited it still more in certain countries at the request of the governments.

[1] Cod. Theod. ix. 45, c. i. iv. vi. Thomassin, P. ii. l. iii. c. xcv. xcvi.

[2] *In the East*, vide Neander, Chrysostomus, ii. p. 71 seq.; Vita S. Tarassii (of Epl.), c. vi. n. 25-27 (Migne, PP. gr. xcviii. p. 1403 seq.); Phot. Ep. 4, p. 68, ed. Montac.; Theod. Stud. l. ii. Ep. 202; Nicol. Mystic. Ep. 3, ad Simeon. Bulg. pp. 170-175, ed. Mai. *In the West*, vide Council of Carthago, 399; of Orange, 441, c. 5; of Orleans, 511, c. 1; Epaon, 517, c. 39; of Lerida (between 524-546), c. 8; of Orleans (iv.), 541, c. 21 (Hefele, ii. pp. 65, 276, 643, 666, 686, 760); of Clermont, 549, c. 22; Macon, 585, c. 8; Rheims, 624, 625, c. 7; Toledo, 681, c. 10; ib. xvi. 693, c. 5; Paderborn, 785, c. 2; Mainz, 813, c. 39 (Hefele, iii. pp. 5, 37, 70, 289, 319, 593, 710); and others. Thomassin, P. ii. l. iii. c. c.

[3] Innoc. III. c. 6, Inter alia, iii. 49, de Immun. Eccl. (ad reg. Scot.). Gregor. IX. c. 10, Immunitatem, h.t. Julius II. ap. Raynald. a. 1504, n. 35.

[4] Huber, p. 55.

[5] Constit. 17, Bullar. t. v. P. i. p. 271. There was at one time a controversy whether the Bull was published only for Italy or for the whole Church; the majority of canonists decided with good reason in favour of the latter view. Schmalzgrueber, in l. iii. tit. 49, § 2, n. 96-98.

[6] Bened. XIV. Instit. Eccles. instit. 41, § 4, p. 286, ed. Ingolst. 1751: 'Cum Romani Pontifices, ac praesertim S. Pius V. et Sixtus V. petentibus principibus indulserint, ab Ecclesia eos quoque divelli, qui criminibus per leges minime cautis tenebantur, et cum maxima rerum perturbatio ex hoc dimanaverit, Gregorius XIV. literas apostolicas promulgavit, quibus concessiones principum gratia .... obsignatas abrogavit .... partim veteres canones secutus, partim ipsorum terminos *extendens*.' Cf. de Syn. Dioec. l. xiii. c. xviii. n. 12, 13.

[7] Pignatelli, Consult. Canon. t. vi. Cons. 4, n. 59 seq. p. 19 seq., gives several documents. The Congregation of the Immunities, on 10 May 1667 and 4 Sept. 1668, maintained the authority of the Bull in opposition to the reclamations raised concerning it by the senate of Milan

(2 July 1666), and by the royal council of Spain (15 April 1667). Especial faculties were granted in 1652 and 1668 to the nuncios of Florence and Naples with reference to the easier *extractio reorum*.

[8] It belonged, as Clement XIV. in a Constitution published for Spain (Const. 200, Ea semper, Bull. Rom. Contin. t. iv. p. 488 seq.) says, like the following of Benedict. XIII. (Const. 73, Ex quo divina, 15 June 1725, Bull. t. xii. p. 1), Clement XII. (Const. 171, In supremo, 1735, Bull. t. xiv. p. 17; t. xv. ed. Lux. pp. 14-18), and Benedict XIV. (Const. 29, Officii, 1750, Bull. Bened. XIV. t. iii. p. 160, ed. Ven. 1754), to those 'quae omnibus Christi fidelibus collaudantibus et plaudentibus in lucem prodierunt.'

[9] The Bull excludes from the right of sanctuary 'publici latrones, grassatores viarum, agrorum depopulatores, committentes homicidium in ecclesia *vel homicidium proditorium*' (this means every kind of assassination), 'assassini, rei laesae majestatis, haereseos,' &c.

[10] Archiv f. Kath. K.R. vol. xi. p. 377 seq.

§ 9.

Janus has (p. 13) referred in the vaguest manner to art. 8 of the Concordat of 1863, drawn up 'with the free States of South America' according to which civil courts have to execute *every* punishment decreed by spiritual judges, *without any power of refusal*. I drew attention (*Anti-Janus*, p. 23) to the fact that no such article was to be found in those Concordats addressed to the different South American States with the text of which I was acquainted. I still maintain the same, after the explanation given (Huber, p. 76 seq.), that the Concordat concluded in 1863 with the Republic of Ecuador was the one *specially* referred to; and that the *Revue des Deux Mondes*, not always to be trusted in such matters, was the source whence the statements concerning arts. 1, 3, 4, 8, 10, 11 were derived. As a matter of fact, the Concordat was concluded with the Republic of Ecuador on September 26, 1862, and, on the exchange of documents, was ratified in Quito, April 19, 1863. The remaining articles nowise differ from other conventions. Article 8 is the only one of special interest, but it does not, as *Janus* says it does, treat of the execution of *every* punishment decreed by spiritual jurisdiction, but only of such as were pronounced on *ecclesiastics*, and it was rendered necessary by the excesses of some of the undisciplined clergy of the country.[1] The government of the republic, which entered into detailed negotiations on this subject, was perfectly satisfied; it was by

no means in its interest entirely to abolish the legal competence of spiritual courts over the criminal causes of the clergy. The day on which Cardinal Antonelli and the ambassador Ordonnez signed the convention, the former gave four explanatory notes to the latter, which were regarded on both sides as an integral addition to the Concordat; two of these relate to spiritual penal jurisdiction over the clergy.[2] They are, like the entire convention, a sure token of the way in which the Holy See is ready to meet the reasonable wishes of governments, and to make, when it appears necessary, still greater concessions, as in Italy earlier; for example, the Concordat with Tuscany, of 25th April 1851, by which the civil and ecclesiastical causes of ecclesiastics were made over to lay jurisdiction,[3] which was also conceded to many other countries.[4]

[1] The article runs: 'Omnes *ecclesiasticae* causae et praesertim matrimoniales atque illae, quae respiciunt fidem, sacramenta, mores, sacras functiones, officia et sacra jura tum personae tum materiae ratione, exceptis majoribus causis summo Pontifici reservatis ex S. Concilii Tridentini praescriptis Sess. xxiv. c. 5, de reform. ad tribunalia ecclesiastica erunt unice deferenda. Idem erit servandum *in civilibus causis ecclesiasticorum* atque in aliis causis, *quae delicta respiciant* comprehensa in criminali reipublicae codice. In omnibus judiciis quae ad judices pertinent ecclesiasticos, civilis magistratus omnem opem auxiliumque feret, ut sententiae ac poenae ab ipsis judicibus latae observentur et executioni mandentur.' There is nothing in the text about 'no power of refusing.'

[2] The first note says: 'Coll' articolo 8 si è dichiarata et confermata l'existenza del foro ecclesiastico per le cause si civile che criminali dei Chierici. A rendere per altro più efficace l' azione della giustizia punitiva ed a prevenire la rinuovazione di scandali, che, provenendo da ecclesiastici, sarebbero di pessimo esempio ai fedeli, V. Ecc. ha domandato, che si prendano dalla S. Sede le opportune provvidenze, onde i processi e i giudizii del foro ecclesiastico siano condotti a termine nel più breve spazio di tempo ed in piena conformità alle leggi canoniche, come pure che si dichiarino decaduti dal privilegio del foro eccl., sia civile sia criminale, tutti quei chierici, i quali se rendono recidivi negli stessi delitti punibili secondo le leggi dello Stato, e che a tale effetto debbano essere giudicati dal foro laico. A dichiarare poi la recidiva, la Ecc. V. propone che basti provare innanzi ai tribunali dello Stato, che il Chierico commise lo stesso delitto dentro lo spazio degli ultimi dodici mesi. Riconoscendo il santo Padre le giuste ragioni, che muovono il governo dell' Equatore a fare la suespressa domanda, ha ordinato al sottoscritto di dichiarare a V. Ecc., che andrà quanto prima a diriggere una lettera enciclica a tutti i vescovi dell' Equatore, imponendo loro di dar corso con ogni precisione e di conchiudere nel più breve spazio di tempo tutti i processi, sia civili, sia criminali, dei

Chierici in piena conformità delle disposizioni canoniche; ed al tempo stesso S. Santità condiscende che gli Ecclesiastici recidivi, giusta il senso da V. E. indicato, siano privati per punizione del privilegio del foro, accordando le opportune facoltà, onde i giudici possano applicare loro le pene imposte dai ss. canoni, qualora per alcuni delitti, come di ubbriachezza, concubinato, mercatura ed altri simili, non si faccia menzione nel codice criminale dello Stato.'

The second note says: 'Il sotto scritto Card. . . . . ha l' onore di accusare la nota in data di oggi, nella quale V. E. ha dichiarato che se nelle cause civili come nelle criminali per delitti contemplati nel codice penale della nazione . . . . per gravi ragioni e per ispeciali circonstanze fosse necessaria una modificazione o deroga al privilegio del foro, il governo dell' Equatore non prenderà provvidenza alcuna in proposito, senza averne preventivamente riportato il consenso della Santa Sede, la quale condiscenderà ad un amichevole accomodamento giusta il bisogno. Se frattanto nel caso di qualsiasi delitto politico fosse mestieri prendere misura contro gli Ecclesiastici delinquenti, il governo invocherà la debita autorizzazione del prelato diocesano per procedere contro gli ecclesiastici a' termini delle leggi vigenti. Quando occorresse assicurarsi del reo, l' arresto dovrà farsi con le cautele e riguardi dovuti all' eccellenza dello stato clericale; ed i luoghi di prigionia saranno sempre i conventi o altri luoghi ecclesiastici, o se non altro luoghi distinti dalle pubbliche prigioni. Infine quando si tratti di sentenza, che importa la pena capitale, si osserveranno le prescrizioni canoniche.'

[3] Art. 6 says: 'La S. Sede *consente*, che le cause *civili* risguardanti le persone ed i beni degli ecclesiastici, del pari che quelle che riguardano attivamente e passivamente il patrimonio della Chiesa e della causa Pia vengano deferite ai tribunali laici.' Art. 10: 'La S. Sede *non fa difficoltà*, che le cause *criminali* degli ecclesiastici per tutti i delitti contemplati dalle leggi criminali dello Stato, estranei alla religione, vengano deferite al giudizio dei tribunali laici, liquali applicano loro le pene dalle leggi stesse prescritte, che subiranno in locali separati ed ad essi specialmente destinati negli stabilimenti penali.'

[4] Bavarian Concordat, 1817, art. 12, lit. c.; Neapolitan Concordat, 1818, art. 20; Convention with Sardinia of March 27, 1841, on criminal jurisdiction over the clergy (Annali delle Scienze religiose, t. xii. p. 420); Convention with Costa Rica of October 7, 1852, art. 14, 15 (Acta Pii IX. vol. i. p. 457); with Guatemala, eod. d. art. 15, 16 (ib. pp. 515, 516); with Austria, August 18, 1855, art. 13, 14 (ib. ii. pp. 470, 471); with Würtemberg, April 8, 1857, art. 5 (ib. p. 597), &c.

§ 10.

It is indeed said, although concessions have been made in consideration of the circumstances of the time, the right to take another course in altered circumstances has also not been given up. But so long as the circumstances remain unaltered

the agreement holds good; and if it was made originally in the form of a treaty, a new negotiation is required for any alteration. How much soever the conduct of the Austrian government might have justified the Pope in cancelling the concessions granted in the Concordat of August 15, 1855, he has certainly not cancelled them. Moreover, the Church is without the material power necessary to regain her former jurisdiction; her servants are everywhere forced to be content if laws are not made in their disfavour, and if the sanctity of religious life, faith, and worship is not violated by the rude intrusion of the civil magistrate.

ESSAY XVI.

THE PUNISHMENT OF HERESY AND THE INQUISITION.

CRUELTY towards other religions, manifested chiefly in the Inquisition, is one of the current objections raised against the Church and the Papacy. Trials for witchcraft also are imputed to some Popes as a heavy charge. *Janus* and Huber both connect the doctrine of Infallibility with the Inquisition, as though the one were supported by the other. Let us examine these objections.

PART I. THE PUNISHMENT OF HERESY.

§ 1, 2. Imperial laws before the sixth century. § 3. Heresy a crime more heinous than high treason. § 4. St. Augustine. § 5. Other Fathers. § 6. Distinction made between unbaptised unbelievers and baptised apostates. § 7. Punishment of death. § 8. Proceedings up to Lucius III. § 9. Lucius III. § 10. Innocent III. § 11. Synod of Avignon. § 12. Complaints against Innocent III. § 13. Laws of Frederick II. against heretics. § 14. Enactments in France.

§ 1.

Offences against religion, namely, apostasy and heresy, were in the early ages of Christianity reckoned amongst the gravest crimes.[1] The Roman Empire, converted to Christianity, could not do otherwise than share this view of the Church, and rigorously repress the spread of errors, by which the peace of the empire also was menaced. As the Donatists, after the Synods of Rome and Arles, as well as after their trial by Constantine, did not submit, but persisted in their defiant demeanour and deeds of violence, the emperor issued in 316 a severe edict, depriving them of their churches, confiscating their property, and banishing the most stubborn of their leaders.[2] After the Council

of Nicæa, in 325, he pronounced banishment upon Arius and two bishops of his party.[3] Further, the immunities of the clergy were limited to Catholics, heretical assemblies were forbidden, heretical writings sought out and destroyed.[4] Theodosius I. published an edict, in which he threatened heretics, required from all his subjects an acknowledgment of the Nicene Creed,[5] deprived the Arians in Constantinople of their churches, which he gave to Catholics,[6] and in 381 forbade heretics from possessing churches or holding divine worship in the cities.[7]

Laws still more severe were subsequently enacted against the Manichæans, against whom an edict had been issued by the Emperor Diocletian, A.D. 296, on account of their excesses and their immoral doctrines,[8] condemning their leaders to be burnt and the followers to decapitation or loss of property.[9] Theodosius declared the Manichæans to be infamous, to be incapable of inheriting or of making wills; those amongst them who were called Encratets to be punished with death.[10] The prætorian prefects should appoint *inquisitors*—the name first appears here—to discover and prosecute them.[11] Heretics were forbidden to hold assemblies, and to impart or receive holy orders, under penalty of a fine. These laws were followed by many others: heretics, especially Donatists and Manichæans, were declared incapable of holding public offices or enjoying civil rights.[12]

[1] The Apostles and their disciples clearly expressed their horror of heresy: 2 Tim. ii. 25 seq.; Tit. iii. 10, 11; Gal. i. 8; 1 Tim. i. 19; 2 Thess. ii. 11; Can. Ap. 38, al. 36, Ant. c. xx. (Hefele, i. pp. 786, 499.) Vide passages in Möhler's Patrologie von Reithmayr, pp. 116, 135, 141, 301, 456, 483, 610; Basil. Ep. 28, ad Neocaes. c. ii. p. 108. Cf. Döllinger, Christenthum und Kirche, § 121, p. 236.

[2] Aug. Ep. 88, ad Januar. n. 3; Ep. 93, ad Vincent. c. lit. Petil. l. ii. n. 205, Optat. de Schism. Don. l. ii. p. 47, ed. Paris, 1679. Fleury, Hist. Eccl. t. iii. l. x. n. 19. Thomassin, Traité des Edits, t. i. c. xi.

[3] The Arians were to be called Porphyrians, and their works to be burnt. Philostorg. Suppl. p. 539, ed. Mogunt, 1679. Socr. H. E. i. 9. Soz. i. 21.

[4] Cod. Theod. xvi. tit. 5, l. 1, 2, 43, 65. Eus. Vita Const. l. iii. c. lxiii-lxvi. Fleury, t. iii. l. ii. n. 31, 46. Thomassin, l.c. c. xxx. Cf. Basilic. l. i. tit. 1, n. 22 seq.

[5] Cod. Theod. xvi. 1, de Fide Cath. l. i. ii.

[6] Socr. v. 7; Soz. vii. 5.

[7] Cod. Theodos. xvi. 5, de Haeret. l. vi. Cf. Fleury, t. iv. l. xviii. n. 9.

[8] Aug. de Mor. Manich. Cf. Bossuet, Hist. des Variations, l. xi. n. 7.

[9] Baron. a. 287, n. 1. Hugo, Jus civile antejustin. Berol. 1815, t. ii. p 1463. Ambrosiaster, in 2 Tim. iii. 7. Cf. Neander, K.G. i. pp. 79, 278, 3d ed.

[10] Cod. Theod. l.c. l. vii. ix. Cf. Cod. Just. i. v. l. 5.

[11] He said: 'Sublimitas itaque tua det *inquisitores*, aperiat forum, indices denunciatoresque *sine invidia delationis* accipiat, nemo praescriptione communi exordium accusationis hujus infringat.'

[12] Cod. Theod. l.c. l. xlii. seq. xii. xxi. Soz. vii. 12. Cod. Justin. i. 5, de Haeret. l. ii. iii. iv.

§ 2.

The Emperor Theodosius II. sent Nestorius into banishment;[1] the Emperor Marcian was not less severe upon Eutyches and his followers; they were declared incapable of making wills or of inheriting, or of entering the army (except for frontier service); their clergy were banished, their books burnt, and the authors and distributors punished with loss of goods and banishment.[2]

Justinian, who incorporated in his code many of these more ancient laws, followed the example of earlier emperors in regarding heretics as transgressors of the law of the State, since the State law recognised and enforced the judgments of the Church; he confirmed the penalties of loss of honour and rights, banishment and loss of goods, for heretics of both sexes.[3] All provincial rulers should swear never to act in any way contrary to the Catholic Church, and hinder with all their strength the enterprises of her adversaries.[4] Equally severe were the laws against apostasy and sacrilege.[5] As early as 435 death was the penalty decreed for those who led others to adopt the errors of any sect.[6] These laws were accepted also by the Visigoths,[7] in Spain,[8] England,[9] and other countries.

[1] Mansi, v. 413, 418. Evagr. H. E. l. i. c. xii.

[2] Mansi, vii. 475 seq. 502 seq. Cod. Just. l.c. l. viii. Hefele, Conc. ii. p. 536 seq.

[3] Cod. Justin. l.c. l. xix.

[4] Liberat. Brev. c. xxiii. Fleury, t. vii. l. xxxiii. n. 1, post Justin. Novell. 8.

[5] Cod. Justin. i. tit. 7. Cf. Dig. xlviii. 13, l. vi. ix.

[6] Cod. Justin. i. 5, l. v. Thomassin, l.c. c. xxx. n. 2, 3. Jac. Gothofred. Proleg. ad Cod. Theodos. c. iii. Canciani, Barbar. Leg. Ant. t. i. Praef. p. 13. Savigny, Gesch. des Röm. Rechts, vol. i. c. iii. seq.

[7] Lex Visigoth. l. xii. tit. 2, § 2.

[8] Conc. Tolet. vi. 636, c. 3; viii. 653, c. 10. Hefele, iii. pp. 83, 92.

[9] Beda Vener. Hist. Eccl. Angl. l. i. c. xxi.

§ 3.

We must be aware of the immense importance attained by the Roman law properly to estimate the principles upon which heretics were persecuted for over a thousand years, and the proceedings taken against them. Even jurists regarded heresy as an offence against civil society: 'What is done against the divine religion is an injury done to all.'[1] It was a graver crime than high treason: 'Far more grievous is it to offend the heavenly than an earthly king.'[2] In these days crimes against earthly kings are punished with extremest penalties, but crimes against the Majesty of God are punished scarcely or not at all, and blasphemy, once a capital offence, is disregarded;[3] and it is very difficult for a mind imbued with these ideas to estimate at their proper value, or in any degree, these ancient laws, once approved universally, and esteemed of undoubted necessity.

[1] 'Quod in religionem divinam committitur, in omnium fertur injuriam.' Theodos. ii. 407, l. iv. Cod. Just. i. 5, de Haeret.

[2] 'Longe gravius aeternam, quam temporalem majestatem offendere.' Auth. de Statu et Cens. post l. xix. l.c.; repeatedly in c. x. de Haer. v. 7 (Innoc. III. l. ii. Ep. 1).

[3] Levit. xxiv. 16. Just. Nov. 77, c. i.

§ 4.

Besides the codes of Theodosius and Justinian, the doctrine of St. Augustine had great influence. The great Bishop of Hippo was at one time adverse to the adoption of severe measures against heretics and schismatics, especially against Donatists; but he tells us that he was led, from weighty reasons, from personal experience, and from the representations of his fellow-bishops, entirely to change his opinion.[1] The reasons that led to the change were the following: (1) The con-

sideration of the necessity for all to be members of the true Church, a happiness outweighing all others, and which made it of the greatest advantage to be able even to bring up the children of Donatists in the true faith; (2) the reflection that men are often brought to a better mind by external means, such as suffering, and are by it prepared for, and made more receptive of, truth; that by paternal chastisements they are more easily led to obedience; that when teaching fails a wise schoolmaster employs force, and that when love is ineffectual fear may operate for good, as God draws His perishing creatures to Him by sorrow.[2] (3) A third reason was the violence and outrages perpetrated by the Circumcellionists, who constantly threatened the Catholics of Africa with murder, fire, and rapine, and compelled them to seek the protection of the State, which was an absolute necessity to them, and one that could not be refused.[3] (4) Fourthly, there was also the consideration that the State punished murder, adultery, and other crimes, and could not, therefore, if it desired to be Christian, leave unpunished the far graver crimes against God.[4]

The same views are stated by St. Jerome,[5] by Leo the Great,[6] Gregory the Great,[7] Isidore of Seville,[8] St. Bernard,[9] and others.[10]

[1] Aug. Retract. ii. 5: 'Et vere tunc mihi non placebat, quia nondum expertus fueram, vel quantum mali auderet impunitas vel quantum eis in melius mutandis conferre posset diligentia disciplinae.' Ep. 93, al. 48, ad Vincent. n. 17: 'Mea primitus sententia non erat nisi neminem ad unitatem Christi esse cogendum, verbo esse agendum, disputatione pugnandum, ratione vincendum, ne fictos Catholicos haberemus, quos apertos haereticos noveramus. Sed haec opinio mea non contradicentium verbis, sed demonstrantium superabatur exemplis. Nam primo mihi opponebatur civitas mea, quae, cum tota esset in parte Donati, ad unitatem Catholicam timore legum imperialium conversa est. . . . . Ita aliae multae, quae mihi nominatim commemorabantur' (c. 3, § 1, c. xxiii. q. 6).

[2] Aug. c. lit. Petil. l. ii. n. 185; Ep. 185, ad Bonif. n. 21; de Civ. Dei, l. xix. c. 16, v. fin.; Ep. 54, ad Macedon. (c. 4, c. xxiii. q. 5).

[3] Ep. ad Vincent. cit. n. 12, 16, c. Gaudent. l. i. c. xxiii.; Ep. cit. ad Bonif. n. 6 (c. 1, c. xxiii. q. 6): 'Cur non cogeret Ecclesia perditos filios, ut redirent, si perditi filii coegerunt alios, ut perirent?' Other passages, vide c. 2, 3, c. xxiii. q. 3, and c. 1, 2, ead. c. q. 5.

[4] C. Gaud. i. 20; ii. 19, c. Ep. Parmen. i. 16; Ep. 105, al. 166; tract. 11 in Joh.; Ep. 185 cit.: 'An fidem non servare levius est animam Deo quam feminam viro?'

[5] Hier. Com. in Gal. v. 8, Opp. vii. 489, ed. Vall. Gratian, c. 16, c. xxiv. q. 3.

[6] Ep. ad Rip. c. Vigil. 109, n. 3 (c. 13, c. xxiii. q. 8): 'Non est crudelitas, crimina pro Deo punire, sed pietas.'

[7] Greg. M. l. i. Ep. 74. Gennadio Patr. (c. 48, c. xxiii. q. 4), Ep. 75. Opp. ii. 558, ed. Paris, 1705. Mansi, ix. 1078 seq. Jaffé, n. 778 seq. Cf. l. ii. Ep. 48, Mansi, ix. 1102, J. n. 835 (against the Donatists in Africa); l. iv. Ep. 34, Mansi, p. 1178, J. n. 889 (against the same); l. v. Ep. 8, Mansi, p. 1189, J. n. 957 (against the Manichæans in Sicily).

[8] Isidor. Hispal. Sent. iii. 51, 53 (c. 20, c. xxiii. q. 5).

[9] Bernard. serm. 76, in Cantic. n. 12: 'Melius procul dubio gladio coercentur, illius videl. qui *non sine causa gladium portat*, quam in suum errorem multos trajicere permittantur. *Dei* enim *minister* ille est, *vindex in iram ei qui male agit.*'

[10] The general proposition of Petrus Dam. (Opusc. lvii. p. 819 seq. ed. Migne) is accepted by most: 'Inordinata sane pietas nutrit impietatem et timida manus medici vulnus auget aegroti. Facit enim exuberare putredinem, dum non secando, sed palpando quotidie superducit vulnusculo cicatricem.' Petrus Bles. (Ep. 113, p. 341) admonishes Archbishop Gaufried of York to combat heretics, saying: 'Accite clerum, congregate populum, ut ex eorum communi deliberatione, qui spiritum Dei habent, terribilis constitutio in vestra provincia promulgetur, quatenus tam gravi animadversione plectantur, qui hac peste laborant, ut ex eorum poena ceteri terreantur.' Peter the Venerable (tract. c. Petrobrus, p. 721) says to the French bishops: 'Vestrum est, et a locis illis, in quibus (haeresis) se latibula invenisse gaudet, et praedicatione, et etiam, si necesse fuerit, vi armata per laicos exturbare.'

§ 5.

Many Fathers are cited as having differed on various grounds from the doctrine of St. Augustine, which was incorporated in Gratian's decretal with other similar passages. Reference is made chiefly to St. Ambrose of Milan and St. Martin of Tours, who seriously disapproved of the presence of Bishop Ithacus and other prelates at the execution of the heretic Priscillian in 385.[1] But the clemency befitting the episcopal dignity would forbid a bishop from desiring the blood of evildoers, or from conducting an execution.[2] St. Augustine and St. Leo the Great were both opposed to this,[3] and it was forbidden by several Councils[4] and by the mediæval law.[5] St. Ambrose was of one accord with St. Augustine concerning the justice of punishing heresy, and clearly expressed his opinion.[6] It was the same thing with other Fathers.

[1] Sulpic. Severi Chron. ii. 50, p. 103 seq. Dial. ii. (iii.) 11-13, p. 208

seq. ed. Vindob. 1866. Ambros. Ep. 24, ad Valent.; Ep. 26, ad Iren. Cf. Neander, K.G. i. p. 813 seq.; and also J. Bernays, Ueber die Chronik des Sulpicius Severus, Berlin, 1861, p. 5 seq.

[2] Sulpic. Sev. l.c. p. 104: 'Ithacius videns, quam invidiosum sibi apud episcopos foret, si accusator etiam postremis rerum capitalium judiciis astitisset.' Before (p. 103) Sulpicius says: 'Quorum (Idacii et Ithacii) studium super expugnandis haereticis non reprehenderem, si non studio vincendi plus quam oportuit certassent.'

[3] Aug. Ep. ad Marcellin. 158, 159 (can. 1, 2, c. xxiii. q. 5). Leo M. Ep. 15, ad Turrib.

[4] *E.g.* Conc. Tolet. xi. c. 6 (c. 30, c. xxiii. q. 8).

[5] Innoc. III. (in Conc. Lat. iv. c. 18; Hefele, v. 792), c. 9, Sententiam, iii. 50, Ne clerici vel monachi. Cf. c. 13, Per venerabilem, iv. 17, Qui filii sint legitimi, § Tria quippe.

[6] Ambros. de Fide, ad Gratian. c. vi.

§ 6.

But it is further objected, that many Fathers and writers of the Church have condemned all external pressure in matters of religion.[1] This is in a certain sense true; but a great distinction has always been made between those who have never had the faith[2] and those who having received baptism have sinned against it. The Church has no authority over the former (1 Cor. v. 12), who must not and never might be forced into belief.[3] This is the doctrine of St. Augustine,[4] of all theologians and canonists, and even of the later Popes.[5] With regard to the latter class, those who have received baptism, if they break their vows, if they neglect the duties they undertook at baptism, if they mislead others, being still subject to the Church, though in rebellion against her, cannot be treated like the unbaptised. The Church and the Catholic State still have authority over them.[6] A rebel does not cease to be a subject because he in bold insolence renounces obedience, and attacks the State with all the means and weapons at his disposal. It is the right and the duty of the government to reduce this refractory member to obedience.[7] The words of Pope Nicholas I., 'God desires only voluntary obedience,' refer to the enforced conversion of the heathen, with regard to whom St. Bernard[8] and later Popes[9] have expressed the same principle. In the Middle Ages the principle was always held sacred that no one should be forced into belief; but

at the same time the right was maintained of punishing the apostasy of those who had believed.[10]

[1] Huber (p. 20) appeals (without exact references) to Tertullian (he must mean lib. ad Scapulam, c. ii.), to Lactantius (he must mean Inst. Div. l. v. c. xiv.), and Athanasius. The words of the latter, Θεοσεβείας ἴδιον μὴ ἀναγκάζειν, ἀλλὰ πείθειν (Hist. Arian. ad Monach. n. 67; Migne, xxv. p. 773), are universally accepted. Many other similar passages could be quoted from the Fathers.

[2] Lactantius speaks of these when he says: 'Non enim nos illicimus, ut ipsi objectant, sed docemus, probamus, ostendimus. Itaque nemo a nobis retinetur invitus; inutilis est enim Deo qui devotione et fide caret.' Natal. Alex. (H. E. saec. 13 et 14, diss. 3, art. 1, n. 11, t. xvi. p. 36 seq.) expresses himself in full concerning Tertullian. To these may be added Cassiodor. Var. ii. 27: 'Religionem imperare non possumus, quia nemo cogitur, ut credat invitus.'

[3] Conc. Tolet. iv. c. 56 (c. 5, d. 45).

[4] Aug. c. lit. Petil. ii. 83 (c. 33, c. xxiii. q. 5): '*Ad fidem* nullus est cogendus invitus, sed per severitatem, imo et per misericordiam Dei tribulationum flagellis solet *perfidia* castigari.' Cf. tract. 20, in Joh. n. 2.

[5] S. Thom. Sum. 2, 2, q. 10, a. 8: 'Infideles, qui numquam fidem habuerunt, non vi compellendi, sed ii, qui quandoque fidem susceperunt. *Accipere fidem* est voluntatis, sed tenere eam susceptam necessitatis.' Cf. q. 11, a. 3. Gonzalez, in c. Ad abolendam, v. 7, de Haeret. n. 14. Gregor. de Valentia, Com. Theol. t. iii. disp. i. q. 10. punct. 6, p. 526. Card. Petra, t. iii. p. 3 seq. Benedict. XIV. ad Episc. Polon. 8 Aug. 1748 (Bull. M. Rom. xvii. 272, ed. Coquel.). Clemens III. 1190, says (c. 9, de Judaeis, v. 6): 'Statuimus, ut nullus invitos vel nolentes Judaeos ad baptismum venire compellat.'

[6] Cf. on this point the Brief of Pius VI. of 10 March 1791, where, after St. Thomas, quotations are made from Tertull. Scorp. c. ii. n. 15, Aug. Ep. 93, ad Vincent., Ep. 185, ad Bonif. (Opp. ii. 237, 652, ed. Maur.), and Benedict XIV. de Beatif. et Canon. l. iii. c. xvii. n. 13. Also Bellarm. de Membr. Eccl. iii. 21; Suarez, de Leg. l. iv. c. xix. n. 2; Petra, l.c. p. 249.

[7] We shall speak later of the application of this principle to modern times.

[8] Bern. serm. 66, in Cant.: 'Quia fides suadenda est, non imponenda.'

[9] Innoc. III. l. ii. Ep. 191, p. 739, ad Christifid. in Saxonia et Westphal. concerning Livonia: 'Sicut ecclesiasticae laesionis censura *compelli non patitur ad credendum invitos:* sic sponte credentibus Apostolica Sedes .... munimen suae protectionis indulget et fideles ad defensionem eorum salubribus monitis exhortatur.'

[10] Conc. Tolet. vi. l.c.

§ 7.

The mode in which men generally reasoned was as follows: according to the Apostle (Romans xiii. 1 seq.), lawful authority has

the power of punishing evildoers. He also says (Tit. iii. 10, and elsewhere) that the heretic is subverted, and sinneth: therefore rulers have the right of punishing heretics.[1] But this right is not a duty to be exercised under all circumstances. It may, however, become a duty to exercise it when indispensable for the protection of the faithful and when the State in union with the Church is appealed to for help.[2] The Church has only pronounced that it is permitted, and is in no manner unlawful to punish heretics as well as other malefactors with death; she had not pronounced it to be necessary and always expedient.[3] The converted Waldenses, who had denied the lawfulness of punishments affecting life or limb, were only required under Innocent III. to acknowledge the lawfulness of such punishments.[4] Theologians say that heretics may (not 'must') be justly punished with death;[5] it only follows from Leo X.'s condemnation of Luther's 33d thesis that it is not contrary to the spirit of Christianity to punish heretics with death by fire.[6]

It was always well known that as every heresy was not equally detestable, so every heretic was not equally guilty.[7] An error in faith, be it ever so small, provided it be joined with rebellion, suffices to hinder salvation;[8] but a human tribunal must consider persons and circumstances, and the greater or less danger of infection; the power of a heresy for disturbing the peace of the county is also, of course, an important consideration for the State authority. In general to apostatise from the Faith was accounted one of the gravest crimes against the State. 'The severity of the punishments inflicted in the Middle Ages for heresy was in proportion to the general severity of punishments at that time. The age was rude compared with our day, and the punishments partook of the nature of the age. They depended also in some measure upon the particular nature of the heretical opinions, some of which were as much at variance with sound reason as with true faith. Some, too, asserted that the true Christ had not yet appeared; the Christ of history was the son of a sinful woman; and there were other such perversions. Imagine the indignation they would excite in the Middle Ages, when people had not become accustomed through historical re-

search to all manner of preposterous assertions, and blasphemy was still, as under the old law, a capital offence. It is perfectly intelligible how the punishment of death came to be decreed for heresy."[9]

[1] Natal. Alex. l.c. a. 1, prop. n. 1.

[2] The Faculty of Paris, in 1526, thus worded the censure passed upon Erasmus of Rotterdam, de Poena Haereticorum, prop. 1 (Du Plessis d'Argentré, Coll. Judic. t. ii. P. i. p. 69): 'Cum sit Catholicum et fide tenendum, non solum licere, sed et oportere haereticos pertinaces extremo supplicio puniri, *quando citra jacturam atque periculum reipublicae id fieri potest nec valet aliter salus eorum aut ceterorum procurari ac conservari*, oppositumque sit error Catharorum, Waldensium et Lutheri generalibus Conciliis et legibus imperialibus damnatus, pii expositoris munus Paraphrastes minime executus est,' &c.

[3] Ib. p. 70, on prop. 5, the censure runs thus: 'Quamvis Evangelium non expresse et aperte haereticos monstret exurendos, leges tamen civiles conformiter ad jus naturale, quod Evangelium non abrogat, morte plectendos atque concremandos juste decernunt.' The reply to prop. 6, 'An leges Ecclesiae sunt, quempiam ultricibus tradere flammis?' was: 'Justas leges magistratuum temporalium pro exstirpatione haereticorum latas Ecclesia non reprobat, licet illas nolit per ecclesiasticos (qui divinis omnino officiis sunt addicti) executioni mandari.' On prop. 7, 'Veteribus episcopis ultima poena erat anathema,' the censure was: 'Propter infestationem tyrannorum in primitiva Ecclesia non poterant haeretici severiori poena mulctari, quam excommunicationis; postea tamen, quum principes saeculi Ecclesiae colla submisere, perspecta contumacia et impietate haereticorum, necessarium fuit, nedum conveniens, in illos gladio temporali animadverti.'

[4] Formula apud Innoc. III. l. xiii. Ep. 94 (Migne, t. ccxvi. p. 291): 'Potestatem saecularem secundum leges officium suum in malefactores peragentem non judicamus neque ob hoc damnandam esse dicimus vel credimus.' Previously the Pope wrote, l. xii. ep. 69, ib. p. 77: 'Illud vero tamquam erroneum nullus vestrum praesumat asserere, quod saecularis potestas sine mortali peccato non *possit* judicium sanguinis exercere, cum lex potius quam judex occidat, dummodo ad inferendam vindictam non odio, sed judicio, non incaute, sed consulte procedat. *Non sine causa*, &c. Romans xiii.'

[5] S. Thom. 2, 2, q. 11, a. 3: '*Possunt* non solum excommunicari sed et juste occidi.' Also earlier, Alanus ab Insulis contra Haeret. l. ii. c. xxii. (Migne, ccx. p. 396): 'De Judaeis dicimus, quod non sunt occidendi. Si tamen laborent illis criminibus, pro quibus lex dictat hominem occidendum, judex *potest* eos occidere, ut in hoc deserviat legi. Similiter haeretici propter haeresin non sunt occidendi, sed propter characterem Christianum, quem habent, ad caulam Ecclesiae reducendi sunt. Si tamen illis peccatis laborant, quibus mors temporalis debetur, a judice saeculari *puniri possunt*, si tamen eos puniat intuitu justitiae, non ex ira vel animi rancore.'

[6] Denzinger, Enchir. 4th ed. p. 224, n. 657. Huber, on the contrary,

p. 40, makes the Bull say that to burn heretics is a work of the Holy Ghost. The Sorbonne, in reference to Luther's proposition, declared: 'Haec propositio est falsa, contra voluntatem Spiritus divini asserta et errori Catharorum et Waldensium consona' (Du Plessis, t. i. P. ii. p. 373, tit. 14).

[7] Ps. Athanas. quaest. 116, ad Antioch Duc. (Migne, PP. gr. t. xxviii. p. 672). Simeon Thessal. Dial. c. Haer. c. x. (ib. t. clv. p. 65).

[8] Pelisson, Lettre à Mme. de Brinon, 4 Sept. 1690 (Œuvres de Leibnitz, par Foucher de Careil, vol. i. 73): 'L'Eglise croit qu'il y a des erreurs plus détestable les unes que les autres; mais elle soutient que la moindre erreur en la foy, accompagnée de rébellion, est détestable et peut priver du salut.'

[9] Möhler, K.G. ed. by Gams, ii. p. 650 seq.

§ 8.

The emperors especially considered it their duty to seek out Manichæans, and in the West also laws remained in force sentencing them to death. Manichæans were burnt in Orleans in 1022;[1] and in 1052 several were executed in Germany by order of Henry III.[2] Similar sects continued to exist under various names, particularly in France, North Italy, and Germany. In the twelfth century they were very numerous, especially on the Rhine.[3] The people often rose against them in wrath, and fearing the clergy would treat them too leniently, sought to forestall their investigations.[4] They delivered up Peter de Bruis to the flames in 1120.[5] Many, however, in spite of their detestation of heretics, could not bear to put them to death; for instance, St. Hildegarde[6] and Peter Cantor, who appealed to the example of Pope Eugenius III. and the Council of Rheims in 1148, where a Manichæan was only punished with imprisonment.[7] However, in the latter half of the twelfth century the increase of the sects and the discovery of their wickedness, by which they had become a pest to society, led to the increased severity or reënactment of the civil and ecclesiastical legislation against them. Civil princes often took the initiative in the matter. Heretics who persecuted the Church, committing sacrileges and pillaging the temples of God, seemed to have incurred the punishment of death, both by divine and human laws; their conduct admitted of no defence, and the prince who did not proceed against them appeared to draw destruction upon himself.[8]

[1] Mansi, xix. 373 seq. 378 seq. 423 seq. Hefele, iv. 642 seq. 648.

[2] Herman. Contract. a. 1052: 'Imperator Natalem Domini Goslare egit ibique quosdam haereticos, inter alia pravi erroris dogmata, Manichaea secta, omnis esum animalis exsecrantes, consensu cunctorum, ne haeretica scabies latius serpens plures inficeret, in patibulis suspendi jussit.'

[3] Hist. Trevir. ap. d'Argentré, t. i. P. i. 24. Everini, Praepos. Ep. ad Bern. ap. Mabillon, Annal. t iii. Ecberti, sermon. in Bibl. PP. Lugd. t. xxiii. 600 seq. Giesler and Neander give many details.

[4] Guibert de Novig. de Vita sua, iii. 14.

[5] Petrus Vener. Praef. ad Tract c. Petrobrus (Migne, clxxxix. p. 723): 'Sed post rogum Petri de Bruis, quo apud S. Ægidium zelus fidelium flammas Dominicae crucis ab eo succensas eum concremando ultus est, postquam plane impius ille de igne ad ignem, de transeunte ad aeternum transitum fecit, haeres nequitiae ejus Heinricus,' &c. Everin of Steinfelden relates another example of summary justice executed by the people upon heretics (Du Plessis, t. i. P. i. p. 33).

[6] Hildeg. Ep. ad Cler. Colon. p. 166, ed. Colon.; Ep. ad Mogunt, p. 138.

[7] Petrus Cantor. Verb. abbreviat. p. 200.

[8] Joh. Saresb. Polycr vi. 13, p. 608: 'Sed prae ceteris omnibus *divino et humano jure* gravius feriuntur *sacrilegi* et hi qui variis perturbationibus impugnant Ecclesiam Dei, quibus *lex* non praecisionem dexterarum, sed poenam irrogat capitalem. Si patrocinium illorum assumant Cicero et Demosthenes, si in defensionem eorum linguam acuat et totius ingenii sui vires exhauriat Quintilianus, *si jura viguerint*, quod post Deum in manu principis est, fortunas eorum et capita, quin legitimis suppliciis feriantur, tueri non poterunt. Quod si gladium suum adversus tales non exserit princeps, *in se ipsum* procul dubio provocat gladium bis acutum, quem in ore suo gerit filius hominis (Apoc. i. 16), gladium utique, qui vivus et efficax est, qui corpus findit et animam (Hebr. iv. 12).'

§ 9.

Many Councils have forbidden the support and defence of heretics. Thus, amongst others, Pope Lucius III. issued, in conjunction with the Emperor Frederick I., at the Council of Verona in 1184, his celebrated decree against heretics, especially against Cathari, Patarines, Humiliati, Passagii, Josephines, Arnoldists.[1] This decree is only a collection of older imperial and local ordinances.

It is quite untrue that all those condemned for heresy and delivered up to the civil tribunal were punished with death. Very many were liberated, with a small fine or short imprisonment, and the amount of punishment was proportioned to the

offence. The decree of Lucius III. only says that laymen, unless they forswear their heresy and perform satisfaction, shall receive from the civil judge a punishment corresponding to the character of their crime.

[1] Cap. ix. Adv. abolendam, v. 7, de Haer. Mansi, l.c. pp. 476, 488 seq. Cf. Hefele, p. 644 seq.

§ 10.

But the sects were ever on the increase, and for the most part had practically ceased to be Christian. They seemed to be waging with the Church a war of life and death, and had attained, especially in the south of France, a power which threatened to bear down all before it.[1] Alexander III., in 1180, had considered a Crusade against them there to be necessary;[2] and it was even more incumbent upon Innocent III. to use extraordinary measures for stemming the tide of danger.[3] The bishops had no sufficient force to meet the sectaries, especially in the south of France, where a spirit hostile to the Church had already attained great power; and the bishops, partly by their own fault,[4] had lost consideration.[5] But something might be hoped from the labours of simple priests, who, poor but faithful and well instructed, and, morever, armed with the authority of Papal legates, obtained the assistance and support of such of the nobles as were still Catholics.[6] The legates sent in 1198 were instructed to endeavour, first of all, to convert heretics by argument;[7] if this failed, to excommunicate them; if their obstinacy continued, to call in the aid of the civil power, which should confiscate their property and drive them into exile,[8] according to laws that already existed, and which had been reënacted also in Lombardy.[9] But all sermons and discussions on religion were very ineffectual. Count Raymond VI. of Toulouse practised many deceptions, pillaged churches and convents, and was a persecutor of Catholics.[10] The guilt was imputed to him, from many suspicious circumstances,[11] of the murder of the legate, Peter of Castelnau, in January 1208; and besides he had performed many acts of violence and cruelty towards bishops and priests, and had been visited with excommunication and inter-

dict. The Papal legate released him from these on the 18th June 1209, on his solemn vow of performing satisfaction.[12]

[1] Hefele, Conc. v. p. 732 seq.

[2] Ib. p. 741.

[3] The first Crusade against heretics is generally ascribed to him. Paramo, de Orig. Inquis. l. ii. tit. 1, c. iii. n. 1; Petra, in Const. 17, Innoc. IV. t. iii. p. 97.

[4] *E.g.* Berenger II., 1191-1212, Archbishop of Narbonne, was not merely inactive but covetous and simoniacal. Innoc. III. l. iii. Ep. 24, p. 903 seq.; l. vi. Ep. 75, p. 355. When the legates were about to proceed against him he appealed to Rome, but did not follow up the appeal, wherefore the Pope summoned him, 1205, to appear, l. viii. Ep. 107, p. 675. He appeared at length, promised amendment, and submitted to the penance, l. ix. Ep. 66, p. 883 seq. But he did not amend; and in 1207 fresh inquiries into his conduct were ordered, l. x. Ep. 68, p. 1164 seq.

[5] Neander, K.G. ii. p. 675 seq.

[6] Cf. Petr. Bles. Ep. 220. Migne, ccvii. p. 510.

[7] That was always held to be first and most important means. Petrus Vener. l.c. p. 721: 'Quia majorem operam eos convertendi quam exterminandi adhibere Christianam charitatem decet, proferatur eis auctoritas, adhibeatur et ratio, ut si *Christiani* permanere volunt, auctoritati, si *homines*, rationi cedere compellantur.'

[8] Innoc. l. i. Ep. 93, 94, 165; l. ii. Ep. 122, 123.

[9] Ib. l. i. Ep. 298; l. ii. Ep. 1, 228.

[10] Innoc. III. l. x. Ep. 69, p. 1166 seq.

[11] Ib. l. xi. Ep. 26, p. 1354 seq.

[12] The documents, apud Migne, t. ccxvi. p. 89 seq. Post Ep. 85, l. xii. Innoc.

§ 11.

The Council of Avignon endeavoured to ameliorate and set in order the spiritual condition of Provence.[1] The bishops were solemnly enjoined to administer with more zeal their office of preachers, and to appoint good preachers;[2] they were further commissioned to compel by censures all counts, governors, and burgesses to take an oath that they would expel heretics, and would punish those who persisted in heresy; also to administer in every parish an oath to the priest and to several well-disposed laymen that they would report to the bishop and the civil authority any heretics who might become known to them, as well as their aiders and abettors.[3] This, as well as the decree that officials who were negligent in this matter should be punished with interdict and ban, was conformable to the decrees of

earlier Councils, and to the statutes of Lucius III. It was also not new that defenders, protectors, and favourers of heretics were with them equally punishable.

Excommunication was by command of the Pope renewed against Count Raymond, who had performed no iota of the satisfaction which he had promised a second time in Rome. The war was violent, for political and selfish interests were concerned in it. Innocent III. found it difficult to bridle the ambition and avarice of the Crusaders.[4] After more fighting and renewed negotiations,[5] the Council of Montpellier in 1215 transferred the conquered district of the county of Toulouse to Earl Simon de Montfort, an arrangement approved only provisionally by the Pope, who awaited a definitive decision from the General Council he had summoned.[6] The enactment was, however, carried through by the prelates of the south of France, who declared that if the conquered territory were surrendered it would be impossible to subdue the heresy. A certain part was retained for Raymond's wife, and reserve was made of the claims of his son over the still unconquered lands. The Count of Foix's castles were subsequently restored to him; and after many vicissitudes Raymond's son eventually came into possession of a large portion of his father's territory.[7]

[1] Mansi, xxii. 783 seq. Hefele, p. 749.

[2] Can. 1. Later Councils (*e.g.* those of Arles, 1234, c. 2, and Beziers, 1246, c. 7) repeated this. Hefele, pp. 919, 1017.

[3] This was done also by the Councils of Montpellier, 1215, c. 46; of Narbonne, 1227, c. 14; of Arles, 1234, c. 5; of Beziers, 1246, c. 1 (Hefele, pp. 765 seq. 839, 919, 1017). The last-mentioned Council has likewise the decree concerning the oath of the barons and burgesses, can. 9; Arles, c. 3.

[4] Innoc. III. l. xv. Ep. 212, 213, p. 739 seq.

[5] Hefele, p. 757 seq.

[6] Ib. p. 766.

[7] Hefele, p. 806 seq.

§ 12.

The great Innocent III. has been frequently accused of cruelty and severity towards heretics.[1] If he is open to the charge, it might also be preferred against the Councils held in his day, and particularly the twelfth General Council. His

penal sentences are not nearly as severe as later ones; they are founded on the law in force before his time. He was very gentle with converted heretics, for instance Durand de Osca.[2] He inculcated patience with the weakness of the newly converted. He knew that many are more touched by admonitions than by threats, and more likely to be converted by leniency than by severity. He would have wine and oil poured upon their wounds, and severe measures applied only when infection of parts still sound was threatened.[3] He deeply grieved over those who persisted in their infatuation, and only extremest danger induced him to allow the rigour of the law to take its course.[4] In his reign he certainly did not fail in giving every opportunity for instruction and information, and in earnestly admonishing bishops[5] to a better discharge of the functions of their pastoral office; it was with him a subject of great solicitude that the innocent should not suffer, and that for this purpose the most careful investigations should be made.[6] Even in the States of the Church the Pope had to combat artful heretics, with whose insolence he became later only too well acquainted.[7]

[1] Huber, p. 18.

[2] L. xv. Ep. 90, 93-96, p. 603, 608 seq. Cf. l. xi. Ep. 198; l. xii. Ep. 17; l. xiii. Ep. 78.

[3] L. xii. Ep. 67, p. 74.

[4] Ib. Ep. 126, pp. 154, 155: 'Ad exterminationem suam rerumque publicationem suarum *secundum constitutiones civiles et canonicas* est processum ut quemadmodum scriptum est, *impiorum spolia justi tollant et divitias thesaurizent eorum.*'

[5] L. vi. Ep. 239, pp. 269, 270; Ep. 242, 243, p. 272 seq.

[6] L. ii. Ep. 228; Ep. Veronensi, p. 788 seq.

[7] L. x. Ep. 130, p. 1220 seq.

§ 13.

Laws concerning spiritual things took precedence of all other laws in ancient codes, and in civil legislation laws against heretics ranked as the foremost and most important.[1] The Emperor Frederick II., on the day of his coronation in Rome, A.D. 1220, proclaimed amongst others two laws against heretics, by which they were declared infamous and outlawed. They were

to be punished with confiscation of property, and the civil government was to dislodge them from their territory, which on the lapse of one year might be taken possession of by Catholics.[2]

[1] Raumer, Gesch. der Hohenstaufen, vol. iii. p. 352.

[2] Pope Honorius confirmed these laws, and in 1221 renewed the anathema over all heretics. Mansi, xxii. 1137. Pertz, Leg. t. ii. p. 243. Walter, Fontes, p. 84, § 5, 6, c. xlix. de Sent. Excom. v. 39. Vinc. Petra, Com. in Const. Apost. Venet. 1729, t. i. p. 196 seq. Fleury, Hist. Ecclés. t. xvi. l. lxxviii. n. 40.

§ 14.

In France, after the death of Louis VIII. (1226), the Albigenses again became more powerful, and Gregory IX. summoned Louis VIII.'s son and successor to resist them by force of arms.[1] Peace was at length (1229) concluded between Louis IX. and Count Raymond VII. of Toulouse, whereby the latter ceded to France a great portion of his territory, and promised to purify the remainder from heresy. In the territory that remained with Raymond, as well as in the provinces ceded to France, convicted heretics were to be punished without delay; the others were sought out and reported to the bishops or their officers, and the property of those who remained a year under excommunication was to be confiscated by the royal bailiffs. In the spring of 1233, Count Raymond VII. issued even more rigorous decrees against the Albigenses.

[1] Raynald, a. 1227, n. 61; a. 1228, n. 20 seq.

Part II. The Inquisition and Witchcraft.

§ 1. Synod of Toulouse. § 2. Dominicans and Franciscans as inquisitors. § 3. Innocent IV. § 4. Classes of persons accused by the Inquisition. § 5, 6. Heresy and high treason. Mode of procedure. § 7. Further development of the Inquisition. § 8. The Inquisition and the Civil Power. § 9. Heretics of the thirteenth century. § 10. Crimes of the Albigenses. § 11. Grounds for interference. § 12. Waldenses and other sects. § 13. Canonisation of Peter Arbues. § 14. Testimony in favour of the inquisitors. § 15. Protestant persecutions of heretics. § 16. Estimate of the Inquisition. § 17. The Spanish State Inquisition. § 18. Magic and witchcraft. § 19. Are trials for witchcraft to be imputed to the Popes? § 20. Huss.

§ 1.

The episcopal Inquisition as it long existed received its complete formation at the Synod of Toulouse[1] in 1229, according to which every bishop was to appoint to every parish a priest and two or three laymen, whose duty it should be to seek out heretics and denounce them to the civil and ecclesiastical authorities; the bailiffs also were to seek out heretics.[2] In order that no innocent person might be punished and no false charges made, no one should be punished as a heretic before having been declared such by a bishop or by some properly authorised ecclesiastic (such as the Cistercian legates and future inquisitors).[3] The case of a person publicly charged with heresy should be subject to a judicial investigation (*inquisitio*).[4] The rules of proceedings against heretics were, as time went on, more and more precisely regulated.

[1] Mansi, xxiii. 191 seq. Hefele, v. p. 872 seq.

[2] C. 1-3. This is quite in accordance with the Council of Avignon, 1209, and with many others (supra, Part I. § 11, note 3); amongst them the Council of Taracona, 1233, c. 8; Tours, 1239, c. 1; Albi, 1254, c. 13 (Hefele, v. pp. 918, 960; vi. p. 41). The latter has the addition: 'Neither from fear, nor hate, nor favour, shall they suffer themselves to be misled in their office.'

[3] The Council of Taracona, 1233, c. 5, repeats this.

[4] Innoc. III. c. xxxi. de Simon, v. 3. Cf. c. xxiv. de Accus. v. 1.

§ 2.

On account of the negligence and corruption of some inquisitors, as well as because the bishops were not sufficient, from the year 1232, Gregory IX. appointed the Dominicans as inquisitors,[1] with whom Franciscans were often associated in the office.[2] The institution found no favour in Germany, though Frederick II. took the inquisitors under his special protection, cast suspicions on the Pope of protecting heretics, and desired to extirpate them himself; it came to an end with the murder of the secular priest Conrad of Marburg in 1233. Many pious men took an active part in the office, but some of the Dominicans became obnoxious from over zeal and excessive severity. Several inquisitors were murdered, others grievously ill-treated or

expelled; wherefore in 1237 the Pope suspended the performance of their official duty in the territory of Toulouse.[3] The Inquisition was introduced into the kingdom of Aragon in 1232-1234.[4]

[1] Bull. Ord. Praed. i. 37, 38. Mansi, xxiii. 74.

[2] Cf. Alex. IV. Const. 18, Cupientes, to the inquisitors of this order, Petra, t. iii. p. 149 seq.

[3] Hefele, pp. 882, 978.

[4] Bzovius, Annal. ad a. 1232, n. 8, 9.

§ 3.

The Inquisition was reëstablished in the south of France in the year 1241, after the death of Gregory IX., and whilst the Papal chair was vacant. The newly-elected Innocent IV. felt it his duty not to accede to the request of Raymond VII. of Toulouse, that the Inquisition should be resigned to the bishops; he desired that the bishops and the inquisitors should coöperate together, especially in delivering sentence;[1] episcopal supervision of the purity of the Faith was, however, in no manner withdrawn.[2] Innocent IV. in 1243 confirmed anew Frederick II.'s laws concerning heretics.[3] It cannot be proved that Frederick's severe laws were first held binding in Germany and Italy after the Bull of Innocent IV.; the Pope specially enforced them in the parts of Italy most threatened.

[1] Schmidt, l.c. pp. 297-325. Hist. de Languedoc, iii. p. 446.

[2] Boniface VIII. c. xvii. de Haer. v. 2, in 6: 'Per hoc, quod negotium haereticae pravitatis (inquirendae) . . . aliquibus ab Apostolica Sede generaliter . . . delegatur, dioecesanis episcopis, quin et ipsi auctoritate ordinaria vel delegata (si habent) in eodem procedere valeant, nolumus derogare.' Cf. Clem. V. c. i. de Haer. v. 3, in Clem.

[3] Const. 1, Cum adversus. Petra, Comment. in Const. Ap. t. iii. p. 1 seq. c. i. l. v. tit. 3, in l. Sept. Bullar. et Taur. iii. p. 503. Cf. ib. p. 552, Const. a. 1252.

§ 4.

Heretics brought to trial and found guilty were divided into three classes: those who being truly penitent were reconciled to the Church; those who submitted to the Church but with doubtful sincerity and for form's sake; and those who remained impenitent and obstinate. The first class were only given some ordinary

and easy ecclesiastical penance.[1] The second class were those who although outwardly renouncing heresy held to it inwardly, and after their release endeavoured with much craft to mislead others. Except the very worst of this class, they were condemned to perpetual imprisonment,[2] but only after their sentence had received Papal confirmation. Those impenitent, amongst whom were included those who had relapsed after having renounced heresy, were delivered up to the civil tribunals. Those who refused to be converted were not to be sentenced forthwith, but were to be several times admonished by inquisitors and others, as the Synod of Beziers, for instance, ordained in 1246. After the laws enacted by Frederick II. in 1231 and 1238, death by fire was the usual sentence upon impenitent heretics.[3] These laws, published during the reign of Gregory IX., at the time when the fresh struggle against this Pope was breaking out, were certainly not issued by his direction and with his concurrence; neither is it true that Frederick's terrible laws against heretics were but in accordance with contemporary and previous Papal ordinances. Until Innocent IV. there is no Papal law of the kind, and previously death by fire was by no means universally sanctioned.

[1] Mansi, xxiii. 353 seq. Hefele, v. p. 979 seq.

[2] Hefele, v. p. 919. Raumer, Gesch. der Hohenst. vi. p. 298.

[3] Cf. Pertz, t. iv. p. 327; Land law of the Sachsenspiegel, Bk. ii. art. 14, § 7; Schwabenspiegel, § 313, p. 136, ed. Lassberg, 1840; Card. Albitius, de Inconstantia in Fide, c. xxi. n. 8; Card. Petra, Com. in Const. Ap. t. iii. p. 6, n. 11.

§ 5.

Formal heresy being, according to imperial law, not merely on a par with but a greater crime than high treason,[1] this principle was carried out into its juridical consequences, and penalties made for the crime of high treason were applied to the crime of heresy. (*a*) In cases of high treason all citizens, without exception, were bound to inform against an offender, and those in other cases not allowed to be accusers were admitted;[2] the same rule was decreed for heresy. Every one was bound to give information respecting heretics known to be such[3] (they referred

to Rom. xvi. 17 seq.); criminals, *infames*, and those guilty of the same crime were allowed to accuse them; the only testimony accounted invalid was that which sprang from malice or enmity.[4] (*b*) Torture was employed to extort confession from those accused of high treason,[5] and Innocent IV. is especially reproached with this. But in the criminal lawsuits of that day torture was commonly employed, and was often used by civil judges even against thieves. This means was to be used, having regard to the person accused[6] and to the crime, not too frequently, and only with a view to completing the evidence by a full confession; it was in general employed much more mildly than in the civil courts.[7] Clement V., moreover, decreed that it should never be employed unless the bishop (or vicar capitular) and the inquisitor were agreed about it;[8] and this led to its being more seldom used. (*c*) Persons guilty of high treason suffered besides death[9] confiscation of their property, of which their children and heirs were likewise deprived.[10] The Councils also inflicted the punishment of confiscation in accordance with the older imperial laws;[11] but it was declared that it should not take effect without a special legal sentence.[12] The sons, and then also the grandchildren, of declared heretics[13] were, as in the case of high treason, deprived of their property;[14] but the grandchildren by the mother's side were excepted.[15] Confiscation was not inflicted upon persons merely suspected of heresy, nor upon heretics who were reconciled to the Church.[16] The dower of an innocent woman ignorant of her husband's heresy at the time of her marriage was exempt from confiscation.[17] The emancipation of children by persons guilty of high treason was held void,[18] and the same applied to heretics.[19] (*d*) For both offences also the names of the witnesses and of the accusers when needful, to shield them from danger, were withheld from the accused;[20] but he was at liberty to name his enemies, who were not allowed to bear witness against him;[21] subsequently witnesses were always made known to some honest men of standing versed in the law,[22] and their testimony subjected to close scrutiny.[23]

[1] Upon Frederick II. vide Schirrmacher, vol. ii. p. 250. [Formal heresy is when a person is a heretic through his own fault. Tr.]

[2] L. vii. viii. Dig. xlviii. 4, ad Leg. Jul. Majest.' Joh. Sar. Polycr. l. vi. c. xxiv. p. 627.

[3] Cf. Tertull. Apol. c. ii.; Devoti, Inst. Jur. Can. iv. tit. 8, § 11, p. 114. But private persons who were under no special obligation were not punished as *fautores* for omitting to give information. Petra, Com. t. iii. pp. 142, 143, n. 22-28.

[4] Council of Narbonne, 1243, c. 24, 25; Hefele, v. p. 981. Alexander IV. c. 5, In fidei, v. 2, de Haer. in 6, lib. sept. c. 7, h.t.

[5] L. iii. iv. Cod. ix. 8; Joh. Saresb. l.c. Innoc. IV. Const. Ad extirpanda, 9, a. 1252, § 25; Urban IV. 1261.

[6] For delicate people, fasting was considered equivalent to the torture. Passerin. in Clem. i. de Haer. n. 31; Petra, t. iii. p. 123, n. 9.

[7] Carena, de Offic. S. Inquisit. Lugd. 1669, tit. 10, § 21. Bangen, Die Röm. Curie, p. 117 seq.

[8] Clem. c. 1, § 1, de Haer. v. 3: 'Duro tamen tradere carceri sive areto, qui magis ad poenam quam ad custodiam videatur, vel tormentis exponere illos aut ad sententiam procedere contra illos episcopus sine inquisitore et inquisitor sine episcopo dioecesano . . . non valebit,' &c. Cf. Eymeric, Direct. P. iii. q. 47.

[9] L. v. Cod. ix. 8, Inst. iv. 18, 3.

[10] L. v. vi. Cod. ix. 8. Frederick II. in the law Inconsutilem: '*Sicuti* per duellionis crimen personas adimit damnatorum et bona et damnat post obitum memoriam defunctorum, sic et in praedicto crimine, quo Patareni notantur, per omnia volumus observari.'

[11] Synod at Albi, 1254, c. 26. Hefele, vi. 42. Pignatelli (Consult. Can. t. vi. Cons. 75, pp. 154, 155; t. viii. Cons. 68, p. 118) shows that it was not inflicted so readily as is generally supposed.

[12] Synod of Beziers, 1246, c. 3. Hefele, v. p. 1017. Bonif. VIII. c. 19, Cum secundum, v. 2, de Haer. in 6.

[13] The heretic retained 'possessio' until 'lata sententia,' and made 'fructos suos.' Gonzalez, in c. Vergentis, h.t. n. 12; Pignatelli, Consult. Can. t. viii. Cons. 68; Petra, t. iii. pp. 45, 46, n. 4 seq.

[14] Frider. II. L. Gazaros: 'Censentes, ut omnia bona talium confiscentur nec ad eos ulterius revertantur, ita quod filii eorum ad successionem eorum pervenire non possint.' Alex. IV. in c. 2, § 2, de Haer. v. 2 in 6: 'Filii usque ad secundam generationem ad nullum ecclesiasticum beneficium seu officium publicum admittantur.' Nevertheless, sons of heretics who were not heretical succeeded to entailed estates, if the entail had not been created by their fathers. Cf. Honor. IV. c. 5, de Haer. v. 3, in lib. sept.

[15] Bonif. VIII. c. 15, Statutum, h.t. in 6. Only in Spain the privation extended to the second generation, which was not fully recognised at Rome; dispensations were also granted.

[16] The irregularity applied to the sons of heretics, but not the *infamia juris*. Petra, t. iii. pp. 87-91.

[17] Innoc. IV. ap. Bonif. VIII. c. 14, Decrevit, h.t. in 6.

[18] L. v. § 4, Cod. ix. 8.

[19] Alex. IV. c. 2, § 4, de Haer. v. 2 in 6.

[20] Innoc. IV. Const. 15, § 3; Urban IV. Const. 2, a. 1262, § 9. Petra, t. iii. p. 169 seq. n. 12: 'Id speciale expostulabat delictum haeresis, cujus causa omnium majorum est maxima, ut sc. ne ob defectum probationum cum magno religionis et fidelium periculo impunitum pertransiret, ex quo testes eorum praepotentiam exhorrescentes contra eos testimonium dicere expavescerent, eorum nomina reo non publicarentur, idemque etiam ob gravitatem delicti servandum esse voluerunt in crimine laesae majestatis humanae Guazzin. et Plazza.'

[21] Thus, according to the precedent of the Synod of Toulouse, 1229, the Synods of Narbonne, 1243, c. 22, and of Beziers, 1246, Instruct. c. 10 (Hefele, v. p. 1020); Petra, l.c. n. 14.

[22] Bonif. VIII. c. Statuta, 20, de Haer. v. 2 in 6.; Eymeric, Direct. P. iii. q. 80. Petra, l.c. n. 13, pp. 169, 170: 'Verum ne id quod solo veritatis amore inductum fuerat, vergeret quandoque in ejus detrimentum cum periculo condemnandi innocentem, idcirco statutum, ut nomine testium exprimerentur aliquibus personis providis, honestis et religiosis,' &c.

[23] Petra, l.c. p. 170, n. 15.

§ 6.

Cases of heresy were no exception to the principle that, failing clear proof or confession, no one should be condemned, as it were better a crime should be unpunished than an innocent person condemned.[1] Clement V. decreed that a sentence of condemnation should be only issued conjointly by the bishop and the inquisitor.[2] The keeping of accurate records of the trial was enforced, and instructions were issued on this subject.[3] The procedure was never to be held altogether in secret. Competent judges were to be present at the actual condemnation,[4] and two conscientious men at the examination of the witnesses.[5] The inquisitors were subject to the vigilant control of the bishops;[6] however much a bishop might be suspected, inquisitors could never proceed against him without a special commission from the Pope.[7] In their laborious office they were always liable to the interference of the Holy See, which regulated their powers[8] very strictly, and forbade any excess whatever.[9] Minute directions were published for the officials and servants of the Inquisition. Inquisitors were to be forty years of age, and men of honour; they were subject to severe penalties for transgressions of their duty. They were also not to be confessors.[10]

[1] These are the very words of the Synod of Narbonne, 1243, can. 23, and the Instruction of Beziers, 1246, can. 11. Alexander III. also wrot-

thus, on Dec. 23, 1162, to Archbishop Henry of Rheims (de Burgensibus haereticis et in fide depravatis, Ep. 118, p. 187): 'Cautius et minus malum est, nocentes et condemnandos absolvere, quam vitam innocentium severitate ecclesiastica condemnare, et melius, viros ecclesiasticos plus etiam quam deceat esse remissos, quam in corrigendis vitiis supra modum existere et apparere severos.' Clement V. (c. 1, § 4, de Haer. v. 3, in Clem.): 'Grave est quoque et damnatione dignissimum, malitiose insontibus eamdem imponere pravitatem.'

[2] Clem. V. c. 1, § 1. Urban IV. had already directed (Const. 2, Licet, 1262, Petra, iii. p. 168 seq.): 'Neminem absque dioecesanorum consilio damnent.'

[3] The Synod of Narbonne, 1243, mentions (c. 6) the records of the confessions of the guilty; the Synod of Albi, 1254, ordains (cap. 21) that they should be made in duplo, and that the duplicates should be preserved in a safe place. Clem. IV. (c. 11, § 1, de Haer. v. 2, in 6) directs accurate records of the trial to be made as well as strict examination of witnesses.

[4] Alex. IV. Const. Cupientes, 1260, Petra, t. iii. p. 149 seq.

[5] Urban IV. Const. 2, Licet, 1262, § 6. In Spain this was firmly upheld. Paramo, de Orig. Inquis. l. iii. q. 4, n. 50; Petra, l.c. p. 169, n. 6, 7.

[6] In general the inquisitors had to act de episcopi (vel vicarii ejus) consilio; Alexander IV. (1257) only allowed interference without requisition of the bishop in cases of haeretici judicialiter confessi et obstinati. Const. 9, Ad capiendum, Petra, t. iii. p. 122 seq. They had, as a rule, jurisdictio cumulativa cum episcopis (Urban IV. Const. Licet, § 3; Clem. VII. Cum sicut, § 2); in Spain, on the contrary, privativa. Petra, t. iii. p. 93, in Innoc. IV. Const. 16, n. 10, 11.

[7] Bonif. VIII. c. 16, Inquisitores, h.t. in 6. Cf. Pius V. Const. 82, § 6; Card. Petra, t. i. p. 135, in Const. 2, Leonis IX. sect. l. n. 76, 83. Innocent XI. caused the censures of an inquisitor against a bishop to be declared null, Jan. 24, 1687 (Petra, l.c. n. 79, 80). In the same way the inquisitors could not take measures against the nuncios and officials of the Holy See (John XXII. c. 3, de Haer. v. 3, in Xvagg. com.).

[8] To these powers belonged the right of punishing those clerics and religious who instructed heretics in false and evasive answers (Alex. IV. c. 8, § 8, h.t. in 6); the right, in certain cases, of proceeding against the praedicatores quaestuarii (Clem. IV. c. 11, § 2, h.t. in 6); the faculty of absolving and of dispensing in irregularities crusaders against heretics (Petra, in Innoc. IV. Const. 17, n. 4, t. iii. p. 97), as well as each other mutually, in cases where their regular superiors could absolve and dispense (Urban IV. Const. 8, Ut negotium, Petra, t. iii. p. 194); the right of proceeding against all privileged and exempted persons, even regulars, who might hinder the execution of their office or fail to give the support they were bound to give; the right of taking as their notaries fitting clergy, religious, or laymen, to all of whom an oath was to be administered (Alex. IV. Const. 22, Ne commissae, 1260, Petra, l.c. pp. 158, 159); the right of committing to others the citation of witnesses, the examination of the same, and the promulgation of the judgment (Urban IV. Const. 2, Licet, 1262, § 10).

[9] Eymeric, Direct. P. ii. c. i. p. 112, ed. Rom. 1587; Pegna, ibid.

[10] Innoc. IV. Const. 9, Ad exstirpanda, § 3; Alex. IV. Const. 2, Cum secundum, 1255 (Petra, t. iii. p. 107 seq.); Clem. V. c. 2, de Haer. v. 3, in Clem.; John XXII. Const. 9, Exigit, 1321 (Petra, t. iv. p. 34); Clem. V. in c. 1, 2, de Haer. v. 3, in Clem.

§ 7.

In the year 1255, Louis IX. begged Pope Alexander IV. to charge the Dominicans with the office of inquisitors in his inherited States;[1] but soon the parliament showed itself hostile to them. The Inquisition was established in Poland under John XXII. and King Ladislaus;[2] a proposal for its introduction into England was made for the first time by the clergy in 1400,[3] when the Lollards were numerous, and severe measures were taken there against the sect; at a Synod held at Oxford in 1408 a decree was published, confirmed by the Convocation of London of the following year, ordering that all persons tainted with heresy should be summarily proceeded against.[4] In Italy, where the Republic of Venice alone offered a lengthened opposition to it, the Inquisition had subsequently its chief field of action;[5] for many heretics had fled from the persecution in the south of France[6] to Lombardy, where they had considerably augmented the agitation caused there by the late political conflicts.

[1] Raynald. a. 1255, n. 34. Fleury, Hist. Ecclés. s. 17, l. lxxxiv. n. 15.

[2] Bzovius, Annal. a. 1327, n. 18. Later (1424) King Ladislaus Jagello issued still more severe laws against heretics. Januszowski, Statuta prawa Krak. 1600, f. 260.

[3] Wilkins, Conc. Brit. iii. p. 252.

[4] Hefele, Conc. vi. p. 847.

[5] P. Sarpi, Discorso sull' origine dell' Inquisizione in Venezia, 1638, 4.

[6] The number of condemnations was later not very considerable here. The Liber Sententiarum of the Inquisition of Toulouse shows, between 1307-1323, only nineteen sentences in this extensive jurisdiction; of these, fifteen were men and four women. Phil. a Limborch, Hist. Inquis. Amstelod. 1692; Gibbon, Hist. of the Decline and Fall, c. liv. note 31.

§ 8.

In 1250, Innocent IV. commissioned Cardinal Octavian and the two Dominicans, Peter (Martyr) of Verona and Vivian of Bergamo, to combat heresy in the north of Italy. But in April 1252, Peter was cruelly murdered by heretics at Como, and

heresy, protected by the tyrannical Ezzelin (who died 1259), maintained the upper hand.[1] The Dominicans, sorely grieved, were desirous of abandoning the post of inquisitors, and besought that it might be taken from them; but the Pope refused to relieve them of it, and endeavoured to animate their courage.[2] It was in vain that Innocent IV. published Constitutions[3] enforcing earlier laws; the magnitude of the evil called for special measures. The coöperation of the civil power was imperatively required on behalf of the inquisitors.[4] Statutes hindering or retarding their operations were declared invalid;[5] sentences passed by the inquisitors were to be executed by the civil power,[6] and the inquisitors were empowered to enforce this by threats of censure.[7] The lay judges could indeed *in causis mixti fori* (cases which fell under the cognisance of the lay as well as of the spiritual courts) demand the acts of the ecclesiastical process,[8] but they could not take cognisance of matters of heresy, which was a purely ecclesiastical offence,[9] and thus could not in cases of heresy demand the acts to be laid before them. The *podestà* of the towns and villages of Italy were in 1265 required, under pain of interdict and excommunication, to incorporate in their capitularies the constitutions of Innocent IV. and Alexander VI. against heretics, which contained also the imperial laws.[10] Such measures, indeed, appear intolerable to the spirit of the nineteenth century. It is too much for modern enlightenment to recognise the Church as an independent power, to allow her the entire cognisance of heresy, the greatest ecclesiastical crime, to claim no *placet* and *appel d'abus*, and no control over her judicial proceedings, to lower the State authority to the position of 'jailer and hangman to the Church."[11] But Popes and Councils maintained their right to call in the aid of the civil power against heretics; and Charles IV. in 1359 issued a severe declaration against the usurpations and innovations which civil princes permitted themselves towards the ecclesiastical jurisdiction. The energetic conduct of Popes succeeded shortly after 1300 in greatly reducing the number of the sectaries in Italy, and the adherents of older or later heresies became very few.[12]

[1] Hist. de Languedoc, iii. pp. 431, 446. Raynald. a. 1251, n. 32; a. 1252, n. 11; 1254, n. 35 seq. 40.

[2] Raumer, Gesch. der Hohenst. vi. p. 300.

[3] Const. Cum fratres Perugia, 11 May 1252; Const. 9, Ad exstirpanda, eod. a.; Const. 10, Cum venerabilis, 1253. Card. Vinc. Petra, Com. in Const. Ap. t. iii. p. 45 seq.

[4] Alex. IV. Const. 15, Exortis, 1258, to the authorities and bishops in the territory of Spoleto (Petra, iii. p. 140 seq.), with the addition: 'In iis tantum quae ad eorum munus pertinent.'

[5] Alex. IV. 1257, Const. 10, Implacida, to the Bishop of Modena (Petra, t. iii. p. 124 seq.); to Innoc. IV. Const. 9, § 38. Likewise Urban IV. 1263, c. 9, Statutum, h.t. in 6. Eymeric, Direct. P. iii. q. 34.

[6] Council of Albi, 1254, c. 22. Alexander IV. declared (c. 6, de Haer. in 6): 'Superiors who are under excommunication, or whose jurisdiction is merely *de facto*, not *de jure*, should and must render the assistance of the temporal arm against heresy when required by the bishops or inquisitors, if these cannot apply to the higher powers.'

[7] Alex. IV. Const. 17, Ad audientiam, 1260; Petra, t. iii. p. 146 seq. Cf. Leo X. Const. 43, Honestis, § 3, ib. p. 149.

[8] Petra, l.c. p. 148, n. 12 seq.

[9] Boniface VIII. c. 18, Ut inquisitionis, h.t. in 6, where also mention is made of the laws of Frederick II.

[10] Clem. IV. Const. 6, Ad exstirpanda, 1265; Const. 8, 1266. Petra, t. iii. pp. 229 seq. 234 seq.

[11] Huber, p. 24.

[12] Muratori, Antiquit. Ital. dissert. 60.

§ 9.

The conciliar and Papal legislation of the thirteenth century exhibits throughout the most numerous and most severe decrees against heretics. This circumstance plainly indicates what was in fact the case, that heresy was most dangerous at this time. 'The sects of the Gnostics, the Cathari and Albigenses, against whom it was necessary to wage a sanguinary war,' writes Döllinger,[1] 'and who especially elicited the severe and inexorable legislation of the Middle Ages against heresy, were the socialists and communists of that time. They attacked marriage, the family, and property; had they triumphed, the consequences would have been general ruin, a return to barbarism and heathen licentiousness.' Huber, on the contrary, adopts the cause of these sects, which may be fittingly compared with 'the Internationalists' of our day. He considers that their antagonism to civil order is highly questionable. He particu-

larly lays down these propositions: that the reports of the crimes of the Albigenses are untrue; that in any case the Church had no right to instigate bloody persecutions against them, for that the wheat and the cockle should both be suffered to grow until the harvest (Matt. xiii. 30); and that there is no excuse for the maintenance and increased severity of the Inquisition over less dangerous sects. Let us examine more minutely these assertions.

[1] Döllinger, Kirche und Kirchen, p. 51; Eng. trans. p. 54.

§ 10.

The likeness which Huber[1] seeks to point out between the ascetic doctrines of the Albigenses and the orthodox monastic system is disproved by the absolute contrast they present both in principles and results. In Gnostic and Manichæan sects both extremes are met with; on the one hand excessive severity,[2] on the other terrible licentiousness.[3] There was immorality and there was danger to civil authority in their doctrine of the free propagation of the species; in their approval of suicide;[4] in their hatred of the wealth of the clergy and the adornment of churches, which was not merely theoretical but led them into sanguinary excesses;[5] in the dissimulation and falsehood, destructive of social honesty, by which they feigned outward submission to the Catholic Church, and declared it lawful to conceal their heretical doctrines.[6]

It was quite natural that the acts of the Inquisition should record the errors but not the excesses of the Albigenses; in discovering whether a certain person was or was not tainted with heresy the criterion would be, not immoral conduct, of which a true believer might equally be guilty, but false doctrine. Heresy was a crime by itself, without needing any other. Fundamental dogmas of Christianity were involved. These heretics denied that Christ was true God and true man;[7] they denied the resurrection of the body, personal immortality,[8] and that the creation was the work of God;[9] they despised the Old Testament, and attributed it to the devil.[10] These doctrines excited among the Christian peoples a deep and most reasonable horror and

aversion. Contemporary testimony to the moral conduct of the sectaries applies only to particular localities; and this apparent morality was often merely hypocritical. As Hefele[11] justly remarks: 'The saying of Innocent III., that the Cathari were worse than Saracens, is certainly true; for their principles were totally un-Christian, and the results they deduced therefrom, in spite, nay on account of the veil of Christianity in which they were enveloped, were more dangerous to Christian society and Christian life than the Koran.'[12] If some of the charges brought against the Albigenses appear absurd, and if similar charges were brought against the early Christians, let us remember that we may learn from the history of the Church that however absurd a thing may be it has its parallel and precedent somewhere; in the primitive ages of Christianity Gnostics were guilty of many crimes which heathens laid to the charge of the true Christians. These heretics were essentially of one accord with the ancient Gnostics and Manichæans, and their deceitfulness was in striking contrast to the truthfulness of the early Christians.

[1] Huber, p. 19.

[2] Neander, K.G. ii. p. 642 seq. 3d ed.

[3] Natal. Alex. H. E. saec. 13 et 14, c. iii. a. 1, § 2, t. xv. p. 135 seq. Ekbert von Schönau, apud Du Plessis d'Argentré, t. i. P. i. p. 45. Council of Rheims, 1157 (Hefele, v. p. 500). Bishop Roger of Châlons to Wazo of Liège; Gesta Episc. Leod. c. lix. Martene et Durand. iv. 898 seq. Vincent of Beauvais, Specul. Hist. l. xxix. c. xxvi. Raumer, Gesch. der Hohenst. vol. iii. pp. 74, 273.

[4] Raumer, l.c. pp. 274, 283. Neander, l.c. p. 644. Hurter, Innoc. III. vol. ii. p. 220.

[5] Raumer, iii. 292; vi. 290. Hurter, l.c. p. 217 seq. Cf. Guill. Armoricus, de Gest. Phil. Aug. (Duchesne, v. 72; Du Plessis, l.c. p. 58), on the 'Ruptarii.'

[6] Neander, p. 647.

[7] Alanus ab Insulis, c. Haeret. l. i. c. xix. seq. c. xxxii. seq. (Migne, ccx. p. 321 seq.). Rainer, c. Wald. c. vi. (Bibl. PP. Lugd. xxv. 266). Moneta, adv. Cath. et Wald. l. i. Bonacurs, ap. Du Plessis, Coll. Jud. t. i. P. i. p. 43.

[8] Alanus, l.c. c. xxv. seq. p. 326 seq. Moneta, f. 357, 362.

[9] Alanus, l.c. l. i. c. ii-viii. p. 308 seq. Bonacurs, l.c. Rainer, ib. p. 48.

[10] Alanus, l.c. c. xxxv. seq. p. 337 seq. Moneta, f. 111, 199.

[11] Hefele, l.c. p. 741.

[12] Alanus ab Insulis, Prolog. ad Libr. contra Haereticos (Migne, ccx. p. 307) : ' Nostris temporibus novi haeretici, imo veteres et inveterati, veterantes dogmata, ex diversis haeresibus unam generalem haeresim compingunt, et quasi ex diversis idolis unum idolum, ex diversis monstris unum monstrum, et quasi ex diversis venenatis herbis unum toxicum commune conficiunt.'

§ 11.

Though proceedings against heretics were often set on foot by the civil power, the Church always regarded it as one of her most sacred duties to resist them, and to employ her penal authority for this purpose.[1] The Cathari appealed to the parable of the cockle and the wheat.[2] They were told in reply,[3] that Christ did not desire that the cockle should be spared but only the wheat; that when the cockle plainly threatened the destruction of the wheat, and when the wheat could be saved by no other means, the cockle should be rooted up. Christ taught that evil should be suffered with the good so long only as the removal of the evil would entail greater harm, so long only as the good would be in danger of being rooted up together with the evil.[4] Moreover, the parable if thus used would prove too much; it would forbid government the use of the sword, would put a stop to excommunication, and would abolish all discipline: the cockle signifies not merely false doctrine but all manner of wickedness.[5]

[1] Cyprian, ad Florent. de Exhort. Martyr. c. v. (Migne, iv. p. 638). Cf. Phillips, K.R. vi. § 322, p. 584.

[2] Moneta, l. v. c. xiii. f. 519.

[3] By William of Paris, de Leg. c. i. Cf. Neander, l.c. p. 648.

[4] Moreover, individuals cannot always decide with certainty whether this or that one is of the cockle. Hieron. Com. in Matt. xiii. 25 : ' Inter triticum et zizania, quod nos appellamus lolium, quamdiu herba est et nondum culmus venit ad spicam, grandis similitudo est et in discernendo aut nulla aut perdifficilis distantia. Praemonet ergo Dominus ne ubi quid ambiguum est, cito sententiam proferamus, sed Deo judici terminum reservemus, ut cum dies judicii venerit, ille non suspicionem criminis, sed manifestum reatum de sanctorum coetu ejiciat.'

[5] So also Calvin, in the refutation of the errors of Servetus, apud Natal. Alex. diss. cit. t. xvi. p. 32.

§ 12.

Less dangerous sects, especially the Waldenses, were also persecuted; but in course of time, and as a result of their obstinate defiance of the Church, the Waldenses adopted many

other errors, notably those of the Cathari;[1] and even originally they were dangerous enough. Again, to quote Döllinger:[2] 'As to the Waldenses, every historian is aware that their principles concerning oaths and the penal authority of the State were such as to deny them any status in the European world at that time.' Every heresy in the Middle Ages was revolutionary, as tending to destroy order and dissolve the existing connection between Church and State.[3] We find no trace of an increased severity on the part of the Inquisition with regard to less dangerous sects; the climax of severity against heretics was attained in the Albigensian persecutions. It is true, however, that a number of Popes employed the Inquisition, for they saw in it a necessary institution suited to the needs of society, approved by experience, and needed in many Christian countries to prevent the dissolution of social order.[4]

[1] Stephan. de Borbone, O.S.D. lib de Septem Donis Spir. S.: 'Postea in Provinciae terra et Lombardiae cum aliis haereticis se admiscentes et errorem eorum bibentes et serentes haeretici sunt judicati infestissimi et periculosissimi, ubique discurrentes, speciem sanctitatis et fidei praeseferentes, veritatem autem ejus non habentes.' The Confession of Faith prescribed by Innocent III. for converted Waldenses shows this also (Denzinger, Enchirid. Defin. 4th ed. p. 159 seq. n. 366 seq.).

[2] L.c.

[3] Hausmann, Gesch. der Papstl. Reservatfälle, p. 110.

[4] Huber declares (p. 21) that in Rome they would like a Council to decree as a saving truth that it was allowable to use force to coerce consciences, and he appeals to prop. 24 and 25 of the Syllabus of 1864 in support of his assertion. Of these propositions, the first treats of ecclesiastical coercive authority in general, and the second even still more generally. The infliction of censures also belongs to the 'potestas coactiva.'

§ 13.

The Catholic priesthood, who for centuries have recited, on the 29th April, the office of Peter Arbues, have taken no offence at his canonisation, as Professor Huber (p. 22) has done. It would indeed be a bold conclusion to infer the canonisation of the Inquisition, with all its acts, from the canonisation of an inquisitor. The infallibility of the teaching office of the Pope in morals does not involve the belief that in laws concerning the Inquisition the Pope always legislated in the best, most perfect, and most judicious manner possible, and in

the punishments inflicted never outstepped the limits of true moderation.[1] The case of Peter Arbues was subject to as close a scrutiny as any other. The process of his canonisation began in 1490; it was resumed in 1537, after the application to that effect made by Charles V. to Paul III. Philip III. in 1614 applied to Paul V. for the same purpose, and in 1622 to Gregory XV. His beatification was pronounced by Alexander VII., on April 17, 1662.[2] After renewed investigations he was canonised by Pius IX. in 1867.

[1] M. Canus, de locis Theol. l. v. c. v.

[2] Bull. Rom. ed. Luxemb. t. vi. pp. 195, 196, Const. 139, Fortissimos.

§ 14.

Why should not a Spanish inquisitor have been a holy man? Their bitterest enemies acknowledge the purity of intention and the blameless lives of the Spanish inquisitors. Llorente, the great historian of the Inquisition and its bitter enemy,[1] who had access to its private papers, and Buckle, who is certainly in this case above suspicion, attest the 'undeviating and incorruptible integrity' of the inquisitors.[2] Townsend, a Protestant clergyman and an Englishman, cannot accuse them; on the contrary, when treating of the Inquisition at Barcelona, he acknowledges that *all* its members were men of worth, and most of them distinguished for humanity.[3] Why, indeed, should not a judge have been a holy man, who conscientiously acted according to the laws in force in his day, though not according to the 'refined morality' of the nineteenth century, which was unknown to his contemporaries?

[1] Llorente, Histoire critique de l'Inquisition d'Espagne. Cf. Carnicero, La Inquisicion justamente restablecida, Madrid, 1816; Hefele, Cardinal Ximenes, 2d ed. p. 291 seq.

[2] Hist. of Civ. in Eng. by H. T. Buckle, vol. i. p. 187, London, 1867.

[3] Townsend, Journey through Spain in 1786 and 1787, i. 122, London, 1792, apud Buckle, l.c. p. 188.

§ 15.

The reformers of the sixteenth century were animated by principles identical with those which issued in the Inquisition. In 1531, Bucer said publicly in the pulpit at Strasburg of

Michael Servetus, that he deserved an ignominious death for his work against the Trinity. In fact, rather more than twenty years later (on the 27th October 1553) Calvin had him burnt at Geneva over a slow fire. Calvin justified the deed in a special work,[1] and his theory and practice were approved not merely by Theodore Beza,[2] the theologian of most repute in Switzerland, but also by Melanchthon, in a letter of the 14th October 1554, and in a special treatise.[3] The Calvinists in Switzerland and elsewhere firmly maintained the right of government to punish heretics with death.[4] The preacher Jacob Gruet was in 1547 tortured and beheaded by Calvin's order. Valentine Gentilis, who was beheaded at Berne on the 10th September 1566, in his theses for a theological disputation had decreed capital punishment for those who were heretical according to his doctrine.[5] Funk as an Ossiandrist, Sylvan as a Socinian, Grell as a Calvinist, Hennig Brabant[6] in the factions of the municipal governments, all fell victims to the dominant religious party. In the imperial city of Nuremberg many religious persecutions took place; and others, it is well known, were instituted against Cryptocalvinism in Saxony.[7] Martin Luther, indeed, several times expressed himself against severe measures,[8] but also in many ways approved of proceedings against heretics—for instance, of punishing Anabaptists with fire and sword—and he demanded the banishment of public sinners;[9] he persecuted fiercely his former friend Karlstadt for deviations in doctrine, and appealed to the civil government against the Zwinglians.[10] He held all measures to be lawful for the extirpation of the Papacy and its adherents,[11] and quietly allowed his partisans, according to the advice of the lawyers, to undertake to defend their religion by force of arms, and even revolt against emperor and empire.[12] It is true he disapproved the deposition of King Christian II. of Denmark, effected by the nation in 1523 on account of many grievances, amongst others the attempt to introduce a new and false religion; but he did this in his own interest, for the King of Denmark was his partisan. The Danish people were far at that time from a change of religion. Christian's successor, Frederick I., was

obliged, on the 23d March 1523, to bind himself by oath not to permit any preachers of Luther's school, but to treat them as heretics :[13] the new king did not venture to confess that he was himself a Lutheran ; only after the religious conference held in 1529 at Copenhagen preparatory measures were taken for the introduction of the new doctrine, which was introduced by force in 1537 by Christian III.[1] Melanchthon, with increasing years, increased in severity towards members of other religious creeds,[15] especially towards strict Lutherans and the Schwenkfeldians, who had already been persecuted. Lutheranism was in general, especially in Germany, introduced by princely authority—for instance, into the duchy of Saxony after the death of Duke George, into Naumburg, and into Silesia.[16] Benedict Carpzov shows us the practice of the Saxon courts of justice, which punished blasphemy against God and Christ with death, and heresies with exile.[17] As late as 1636, John Adelgreiff was beheaded and burnt in Königsberg; and in 1687, Gunther, for leaning towards Socinianism, was beheaded in Lübeck upon the judgment of the jurists of Kiel and of the Theological Faculty of Wittenberg.[18] In England, Henry VIII., both before and after his schism, allowed the execution of heretics; Cranmer defended it on Scriptural grounds;[19] and in the reign of Elizabeth, the celebrated jurist Edward Coke argued in favour of severe penalties for heresy, as a crime against the Majesty of God and a pestilential leprosy of the soul.[20] The cruelties perpetrated under Elizabeth against Catholics far exceed all the punishments of the Spanish Inquisition.[21] Ranke speaks of the High Commission as a species of Protestant Inquisition.[22] The greatest tyranny was exercised towards Nonconformists.[23] In Sweden, where Gustavus Wasa introduced the new doctrines by force, extreme cruelty was employed towards adherents of the ancient faith.[24] In the Netherlands, William Amesius (died 1634) urged the persecution of heretics;[25] and Coster, in his apology against the Gomarists, mentions as a fact that Calvinists held it lawful to inflict the punishment of death upon Catholics, and executed it upon not a few.[26] Döllinger[27] was right, that 'nothing is historically more untrue than the assertion that the Reforma-

tion was a movement in favour of liberty of conscience; it was quite the contrary.' Protestants demanded this liberty for themselves, but when they were the stronger party they never granted it to others.[28]

[1] Fidelis expositio errorum M. Serveti et brevis eorum refutatio, ubi docetur jure gladii coercendos esse haereticos, 1554, Calvini Opusc. p. 686 seq. Gibbon says: 'I am more deeply scandalised at the single execution of Servetus than at the hecatombs which have blazed in the auto da fés of Spain and Portugal. A Catholic inquisitor yields the same obedience which he requires, but Calvin proscribed in Servetus the guilt of his rebellion.' Hist. of the Decline and Fall, chap. liv. note.

[2] Beza, Tract. de haereticis a magistratu civili puniendis, 1554. Cf. Jean Barbeyrac, Préface au livre de Pufendorf, § 11; Schröckh, Kirch. Gesch. seit der Reform. vol. v. p. 189.

[3] Epistol. Calvini, n. 187. Consilia et Judicia theol. ed. Pezelius, ii. 204. Schröckh, l.c. p. 517.

[4] Confess. Helvet. ii. art. 26; i. c. xxx.; Belg. a. 36; Scot. a. 29. Hefele, Conc. vii. p. 215 seq. Guericke, Lehrb. d. Kirch. Gesch. iii. p. 434, 9th ed.

[5] Guericke, l.c. p. 435, nt. 2. Cf. Benedict Aretius, Hist. de Supplicio Valent. Gentilis.

[6] Menzel, Neuere Gesch. der Deutschen, iv. pp. 333, 404; v. pp. 217, 229-237. On the eve of the execution of Hennig Brabant, Pastor Wagner preached in St. Katharine's in Brunswick on the stoning of Achan; he pointed out the proper attitude of Christian governments with regard to such criminals, and that pious Christians should assist at such executions.

[7] Besnard, Repertorium, 1842, p. 301. Menzel, iv. pp. 450-464; v. pp. 185-195, 205 seq.

[8] Luther, Epistol. a Joh. Aurifabro collect. t. ii. p. 381, Eisleb. 1665, 4. Schröckh, l.c. v. pp. 187, 188.

[9] Luther, Werke, v. 286 seq.; xx. 364, Altenb. ed.; xiii. 440-442, Hall. ed.

[10] Menzel, l.c. i. 273, 480. Riffel, K.G. der neuesten Zeit. vol. i. pp. 332, 403. Phillips, K.R. iii. § 139.

[11] Sleidan, l. i. c. xxv. Cf. M. Gerbert, op. cit. l. iii. c. viii. n. 2.

[12] Cf. 'Warnung an meine lieben Deutschen' (Admonition to my beloved Germans) against the decree of the Diet of 1530, Luther's Werke, xvi. pp. 1090-2062, Walch's ed.; Menzel, l.c. pp. 422, 423; Rintel, l.c. pp. 49-51; Bossuet, Hist. des Variations, P. iii. l. i.; Gerbert, l.c. n. 3.

[13] Mohler's K.G. by Gams, iii. p. 192. Dahlmann's Dänische Gesch. iii. pp. 356, 357.

[14] Pantopiddan, ii. p. 806.

[15] Döllinger, Die Reform. gives the proofs, i. p. 388 seq. Cf. p. 237 seq.

[16] Menzel, l.c. vol. ii. pp. 1, 145-150, 275-281.

[17] B. Carpzovii Practica criminalis, P. i. q. 44, de Crimine Haereseos; q. 45, de Blasphemiae Poena.

[18] Arnold, Ketzerhistorie, ii. 643. Döllinger, Kirche und Kirchen, p. 81, nt. 2; Eng. trans. i. p. 87 seq.

[19] Schröckh, K.G. seit der Reformation, ii. 512, 588 seq.
[20] E. Coke, Instit. iii. 5.
[21] Spondan. a. 1581, n. 15.
[22] Ranke, Päpste, ii. p. 160; Eng. trans. b. v. p. 114.
[23] Chebus, Die Dissenters in England (Niedner's Zeitschrift f. Histor. Theol. 1848, i. pp. 87-96).
[24] Buckle, l.c. i. chap. v. p. 264, note 80.
[25] Schröckh, l.c. vol. v. pp. 163, 164.
[26] Joh. Gerard. de Magistr. polit. n. 316, p. 1046.
[27] Kirche und Kirchen, p. 68; Eng. trans. p. 65.
[28] The English Calvinists who in the reign of Queen Mary fled to Denmark not only received no welcome from the Lutherans there, but were even rejected by them in the harshest and most inhuman manner. Menzel, vol. v. p. 119.

§ 16.

To judge the Inquisition rightly, the principle must be distinguished from its application. It cannot be denied that in the latter there were grave and lamentable defects, although the question has been much obscured by falsehood. For example, confession of mere sins of thought, from which any confessor could absolve, was never extorted from an accused person, neither was an appeal refused.[1] Even men like Guizot,[2] Villemain,[3] and St.-Simon have acknowledged that the Inquisition kept the sincere conversion of the delinquent well in view. Abuses practised by individual inquisitors were always condemned, and the Inquisition itself is not responsible for them.[5]

The principle that formal heresy is the most grievous crime is a natural consequence of the acceptance of the Christian religion.[6] In every ordered commonwealth the first law is that which provides for the safety and welfare of all. In the Church, purity of faith and morals is regarded as an essential condition of salvation, and must therefore be provided for accordingly.[7] Christian society could not feel obliged to acquiesce in the external propagation and dissemination of false doctrines because those who held them might entertain a conviction of their truth; otherwise the adulterer, forger, or murderer should be unpunished if his ill-regulated conscience acquitted him of guilt. The Church holds that open formal heresy deserves punishment, and therefore when it has been punished this has been rightly done; the application of the penalty in individual

instances may have been faulty, for this is an action not of the teaching office but of the judicial authority; it is regulated principally by the criminal laws of the age in question, and by the notions of the time with regard to the treatment of criminals, which the Church adopts *in foro externo*. In many countries the punishments for poaching, burglary, sodomy, and false coining were more severe than those of the Inquisition. The Inquisition is not 'a product of the Papal doctrine of faith and morals,'[8] but a form of applying a positive principle of law—an external means for the execution of the law.

[1] Devoti, Instit. Jur. Can. t. iv. tit. 8, § 14, pp. 116, 117, who refers to S. Thom. Sum. 1, 2, q. 91, a. 4, q. 100, a. 9; and Bened. XIV. Syn. Dioec. l. ix. c. iv. n. 4.

[2] Hist. de la Civil. leçon vi. p. 56.

[3] Cours de Littérat. Bruxelles, 1838, p. 27.

[4] Doctrine de St.-Simon, 1828, p. 313.

[5] Cf. Censura Facult. Theol. Paris. in Erasmum, tit. de Poenis Haeret. prop. 3, 8; Du Plessis d'Argentré, t. ii. P. i. pp. 70, 71.

[6] Cf. Beidtel, Das canonische Recht, pp. 563-569. Balmez, Protestantism and Catholicity, chaps. xxxiv. xxxvi. Cf. also c. 35, c. xxiii. q. 4: 'Nec omnino liberabis hominem, nisi eum persecutus fueris peccatorem.' Alan. ab Insulis, de Arte praedicat. c. xviii. (Migne, ccx. p. 148): 'Reddat charitas compassionem homini, puniat aequitas enormitatem vitii.'

[7] Devoti, Jus Can. t. iv. l. iv. tit. 8, § 1, p. 102. Balmez, chap. xxxv.

[8] A. Z. June 19, 1870; Schulte, i. pp. 47-49. He makes a very confused collection of laws against heretics in proof of his twelfth proposition, 'The Pope can deprive excommunicated persons of all their social rights, and in particular can dissolve their marriages.' The proceedings of Urban V. against Barnabò Visconti of Milan are especially cited (p. 50) in proof of this. But the text of the Bull is not given; we only find ourselves referred to the statement of H. Spondanus, ad a. 1363, n. 1. The text, apud Raynald. h.a. n. 2, has, on the contrary, nothing about the dissolution of the marriage bond. There is no sense in regarding a mere judicial sentence as *definitio ex cathedrâ*, neither in bringing a definition of the Council of Trent to bear upon an event which occurred two hundred years before. Vide Fessler, Infallibility, Eng. trans. pp. 95 seq. 63 seq.; Archiv f. Kath. Kirchenrecht, vol. xxv. p. 122, n. 10.

§ 17.

Inquisitors had to proceed not only against heretics, but against Catholics who apostatised to Judaism[1] or Mahometanism;[2] the Councils also punished this apostasy like heresy.[3]

There were many Jews in Spain who feigned conversion and were baptised, and succeeded in attaining even to bishoprics[4]

The Spanish Inquisition was directed especially against Jews and Moors,[5] and as a *purely State institution*[6] it sought to withdraw itself from Papal control, which opposed its severity.[7]

Sixtus IV. had in 1478 confirmed the institution, but as early as 1482 he had cause to complain of its practice; and in 1483 appeals were accepted in Rome against the Spanish inquisitors, of whom, in 1519, some were even excommunicated. The grand inquisitors Thomas Torquemada (1483-1498) and Didacus Deza (1498-1506) relied chiefly upon the authority of the State, which was in continual danger from the 'new Christians.' The Inquisition was by no means unpopular, and the State found it an efficient safeguard.[8] The Holy See afforded protection to many victims of the persecution, and took measures for the maintenance of justice, especially by proceedings against false witnesses and false accusers.[9] Paul III. reorganised the Inquisition to meet the danger threatened by Protestantism; it had been established in Portugal under Clement VII. in 1527,[10] and was intrusted to the charge of cardinals chosen for their fitness for the office, and invested with wide authority.[11] Paul IV., who, without regard for persons, even for cardinals, strictly maintained the purity of the Faith, was favourable to the Inquisition, which was approved in Italy. In 1551, Julius III. expressly ordained that, except bishops, no one beyond the persons bearing the commission of the Inquisition should interfere in its operations; he wished to prevent the encroachments of State officials.[12] Pius IV. still further amended the existing regulations;[13] and Pius V., who had been an inquisitor, and as such had often incurred risk of his life,[14] insisted upon greater care in the proceedings of the tribunal.[15]

The Inquisition in Rome was, upon the whole, very lenient;[16] far more so than the Spanish Inquisition, though this has been very often described with enormous exaggeration.[17] Not half as many Spanish subjects lost their lives by the Inquisition as in our century by civil wars, by wholesale political executions, by the massacres in Cuba and in the East Indies. It often happens that those who complain most loudly of the cruelty of bygone days are the last to notice the crimes of the age in which we live.

[1] Clem. IV. Const. 14, Turbato corde, 1267. Petra, t. iii. p. 248 seq. Boniface VIII. c. 13, Contra, v. 2, de Haer. in 6. Cf. Greg. X. Const. 3, a. 1273; Nicol. IV. Const. 4, a. 1288; Petra, l.c. pp. 253 seq. 266 seq.; Paul IV. 1566, ib. p. 251.

[2] Gregor. XI. Const. 2, Admodum, 3 August 1372. Petra, t. iv. p. 153.

[3] Council of Mainz, 1310, c. 125. Hefele, vi. p. 446.

[4] Conc. Tolet. xvii. 694, c. 8. Hefele, iii. p. 323.

[5] Balmez, l.c. chap. xxxvi.

[6] Leo, Weltgesch. ii. p. 431. Cf. also Ranke, Päpste, i. p. 242 seq.; Eng. trans. vol. ii. p. 14; Hefele, Ximenes, p. 241 seq.

[7] Menzel, l.c. iv. p. 197.

[8] Balmez, l.c.

[9] Leo X. Const. 32, Intelleximus, a. 1518, Bull. Rom. iii. p. 465.

[10] Phillips, K.R. vi. p. 586.

[11] Paul III. Const. Licet ab initio, 1542, Bull. Rom. vi. ed. Taur. vi. p. 344.

[12] Jul. III. Const. 11, Licet a diversis, Bull. ed. cit. p. 431. Phillips, l.c. § 322, p. 587.

[13] Phillips, l.c. p. 588.

[14] Gabutius, Vita Pii, v. l. i. c. ii. pp. 10-12.

[15] Phillips, l.c. p. 589. Huber, p. 49, considers him 'the embodiment of intolerance.'

[16] Bened. XIV. de Syn. Dioec. l. vi. c. xi. n. 8, 12. Phillips, l.c. p. 597 seq. When the Roman Republic under Mazzini, on Feb. 28, 1849, decreed the abolition of the S. Uffizio, they first of all caused skeletons, bones, and suchlike to be introduced into the building, and then incited the people to burn it down; but the Carabineers who were quartered there, and who knew of the deception, offered a firm resistance. La Rivoluzione Romana, Firenze, 1850, l. ii. c. xiv. p. 336.

[17] Such are to be found, for instance, in a work that appeared in 1811: La Inquisicion sin máscara, by Nathanael Jomtob. It is full of the most burning hatred against everything Spanish. Balmez, l.c. As the danger of the introduction of Protestantism into Spain diminished, and as the spirit of the criminal code became more lenient, in the same measure did the Inquisition lessen its severity. Ib.

§ 18.

The Inquisition is also charged with directing its operations towards mere delusions, viz. so-called magic, devil-worship, and witchcraft, and of increasing the number of trials for witchcraft after the introduction of torture. But at its commencement the Inquisition had very little to do with these. Alexander IV. forbade inquisitors to punish persons accused of witchcraft,[1] and John XXII. only permitted their interference when heresy was joined to witchcraft in the accusation.[2]

Sorcerers were in general sentenced by the Church only to excommunication;[3] but the civil power was far more severe.[4]

After the thirteenth century trials for witchcraft instituted by the State[5] became at last a sort of epidemic,[6] and a verdict of guilt was followed by the burning of the accused.[7] This penalty together with torture was also employed in the East at an earlier period.[8] There is no trace of popular superstitions being fostered by the mediæval Popes.[9] The Bull of Innocent VIII., called the Witchcraft Bull, was issued in the year 1484.[10] Its object was, by making sorcery a matter for spiritual jurisdiction alone, to put a stop to the panic and disorder created by the operations of the civil tribunals.[11] This object was accomplished for a certain period.

The belief in sorcery long prevailed, and was common to Catholics and Protestants. In 1560, John Wein of Grave-on-the-Maas, physician to the Duke of Cleves, wrote against the burning of witches. In 1565, the Protestant legal faculty of Marburg condemned his work, and the author barely escaped a severe persecution, such as overtook Cornelius Loos. Also the Jesuit Adam Tanner, Chancellor of the University of Prague, was most violently opposed in his endeavour to check the evil. Frederick von Spee, also a Jesuit, was the author of a work which marks an epoch in the struggle.[12] It shows the immense difficulties attending even so able a resistance of the predominant belief.[13] *No witches were burnt in Rome*, and an instruction[14] which issued thence in 1657 effected much towards bringing legal proceedings more into accord with justice and truth. It called in the aid not merely of theologians and canonists, but even more imperatively of lawyers and physicians. Time alone could afford a complete remedy. The last witch was burnt at Glarus in 1783,[15] not, as has been said, at Seville in 1781. It is very doubtful whether, as Huber says, Protestantism merely accepted the belief in witches as a legacy bequeathed to it by the Middle Ages. Carpzov's vehement opposition to Spee does not look like it; neither do the facts of the Protestant persecutions for witchcraft[16] nor Luther's expressions about the devil.[17] Certainly on this point Luther's judgment was not 'formed upon the example of St. Thomas Aquinas,' whom besides he hated bitterly.

[1] Alex. IV. c. 8, § 4, de Haer. v. 2 in 6.

[2] Joh. XXII. Const. 13, Super, 12 Aug. 1325. Petra, t. iv. p. 45 seq. Eymeric, Direct. P. ii. q. 43, n. 9.

[3] *E.g.* Synods of Grado, 1296, c. 23; of Salamanca, 1335, c. 15; of Prague, 1349, c. 56 (Hefele, vi. pp. 835, 561, 598).

[4] Friedberg (l.c. p. 93, No. 3, 5, 8, 9) quotes English codes of law and the decrees of French parliaments. Görres (Mystik, iv. ii. p. 513 seq.) gives other references. Charles V. reënacted the punishment of burning for witches and sorcerers who bring evil upon others. Engel, Coll. Jur. Can. l. v. tit. 21, § 3, n. 17 fin. It is certain that in individual instances many *crimes* were committed by witches and sorcerers. Monstrelet, Chron. a. 1459, 1460; Du Plessis, t. i. P. ii. p. 418, c. 2.

[5] Magic was held to be a crime *mixti fori*. Reiffenstuel, in l. v. Decret. tit. 21, n. 18. Schmalzgrueber, in h.l. n. 51, with references to earlier authors; also Van Espen, Jur. Eccl. Univ. P. iii. tit. 4, c. iii. n. 49-54.

[6] Land-law of the Sachsenspiegel, b. ii. art. 13, § 7.

[7] Phillips, Vermischte Schriften, iii. p. 193.

[8] L. v-ix. Cod. ix. 18. Cf. Basil. l. lx. c. xxxix. n. 21; Leo, Sap. Const. 65 (Migne, cvii. 565).

[9] In the Decretals of Gregory IX. only three passages stand under the title in question: the first belongs to the *penitentiale* of Theodore of Canterbury; the second (of Alexander III.) refers to the *inspectio astrolabii* for the discovery of theft; the third (of Honorius III.) forbids the election of bishops by lot (l. v. Decret. tit. 21, de Sortil.). Canonists treat of these matters under this title.

[10] Const. Summis desiderantes, Bull. Rom. iii. iii. p. 291.

[11] Phillips, Lehrbuch des K.R. § 204, p. 602, iii. Alexander VI. (c. un. de Malef. et Incant. v. 12 in Sept.), Leo X. (Const. Honestis petentium, 1521, Bull. Rom. l.c. p. 499), and Hadrian VI. (ad Inquis. Com. 20 Juli 1522; Hard. Conc. ix. pp. 1907-1910) used their authority to repress the evil of sorcerers, especially in Lombardy. 'The Popes,' says Görres (l.c. p. 651 seq.) 'were bound to take cognisance of a matter so important, so deeply rooted in the people, and in which the people believed, and therefore they sent out inquisitors. This Bull of Innocent was designed merely for the protection within the limits of their jurisdiction of the courts established in the Rhine lands, where the evil was freshly spreading; it confirmed their authority to arrest, punish, or reclaim from evil courses; permitting them especially for the better exercise of the latter duty to expound the Word of God to the people in any parish church within their jurisdiction as often as it should be necessary, and to have recourse to all measures their opinion judged conducive to the instruction of the people. Any sins they may through weakness have fallen into, by going too far or not far enough, cannot be justified by the orders they received. Far rather should this case be held as proof that the Popes' conduct was throughout directed to moderate and soothe, and that whilst paying due regard to the spirit of the time they always endeavoured to use the insight they had acquired to introduce a better state of things.'

[12] Cautio criminalis s. de processibus contra sagas, Rintel, 1631, Francof. 1632. Dub. xxviii. shows how much strict judges mistrusted even confessors.

[13] Spee's chief opponent was the Protestant jurist Benedict Carpzov. This question is fully treated in the Historisch Polit. Blättern, vol. lxviii. H. 5, 6, to which we must here refer. The stanch Protestant M. Schröckh (K.G. seit der Reform. vol. vii. p. 326) observes with regard to Spee: 'It is an honour to Catholic Germany that even in the earlier years of this same seventeenth century, *that is, long before Protestants had begun to think of the reformation of this superstition*, a courageous friend of truth had entered the lists against it.' Schröckh takes note also of some later Italian writings to the same purport, as well as of the disputes which broke out in Bavaria in 1766.

[14] Vide also Görres, l.c. p. 652 seq.

[15] Histor. Polit. Bl. l.c. Schröckh, l.c. p. 336, put it at 1780.

[16] Menzel, l.c. vol. v. p. 90; viii. p. 59 seq. Illgen's Zeitschr. für Histor. Theol. 1841, p. 181 seq. Döllinger, Die Reformation, ii. p. 418.

[17] The passages are given in the paper, Luther über das Zauberwesen, Histor. Polit. Bl. 1861 (vol. xlvii. pp. 890-918).

§ 19.

Huber tells us that the superstition of the Popes, the Inquisition, and the so-called Witchcraft Bull of Innocent VIII., raised trials for witchcraft to gigantic proportions. To disprove his statement we have but to glance at the German Synod of 799[1] against sorcerers and witches, at the massacre of witches in Germany in 1074, which Gregory VII. rebuked,[2] and at the schismatic Greeks, who also believed in sorcery and witchcraft. The treatise of Psellus[3] is anterior to all similar works in western countries on the same subject. The Greeks had an institution quite similar to the Inquisition of the Latins; the *principle* was the same, although burning was not universally in use as the punishment. In the year 1338 a certain George Tzerentzes in Constantinople was accused of magic; and when confession had been obtained, he was sentenced to severe ecclesiastical penance; his relations were to keep strict watch over him, and if he relapsed, he was to be excommunicated and severely punished.[4] The Patriarch John XIV. issued a pastoral to his clergy expressly against incantations and magic, which had again gained much ground; and he gave orders that the clergy should go about in the town to make minute investigations after such sorcerers and seducers, and that every one should assist them in their search.[5] He likewise ordered the civil authorities[6] to render assistance in this God-pleasing[7] work to the spiritual

inquisitors, who in each quarter of the town should institute minute investigations after sorcerers,[8] that the guilty might be punished as they deserved. The Patriarch Kallistus published a charge to the people when a sorceress and soothsayer, Amarantine, who had long remained concealed, was converted of her own free will, and went to do penance in a convent; he admonished those whom she had corrupted to imitate her repentance, and insured to her a prebend from the emperor (1351).[9] The trial of two sorcerers was likewise undertaken.[10] In January 1365 a monk Isaias was dismissed for having given a fee to a sorcerer for the recovery of a sum of money lost by the monk Hilarion.[11] On the 12th May 1371 a synodal decree was published against sorcery.[12] A monk Phudules was accused of originating the disorder, especially of attracting women, who for love of him abandoned their husbands and children. He repented, and admitted having received books upon sorcery from a physician Syropulos.[13] Strict trials were instituted upon this monk, as well as upon Syropulos and a certain Gabrielopulos; they were banished from Constantinople and from the empire; a priest John Paradeisos, corrupted by Syropulos, a monk Joasaph, and a 'papas' James were deposed. In May 1371 three priests abjured sorcery with other errors.[14] On April 22, 1372, a priest Stylian Clidas was excommunicated for having used sorcery.[15] In May 1383 the monk Theodosius Phudules was made to promise before the Patriarch Nilus that he would never more employ magic.[16] It is certain that the superstition was not less strong amongst the Greeks than amongst the Latins, and was wider spread;[17] they were forced to be content with punishing its more glaring excesses. Balsamon frequently mentions punishments ordained by Synods for sorcerers and witches;[18] the belief in their existence and that they deserved punishment were the same as in the West: the proportion of the punishment was not always the same; all were not put to death as the magician Paulinus was in the sixth century.[19] I was justified therefore in inquiring: 'Were the Popes responsible for the introduction of witchcraft amongst the schismatic Greeks?' when *Janus* asserted that all witchcraft was either directly or indirectly a

product of the belief in the irrefragable authority of the Pope. This indictment concerning witchcraft is one of those which, as De Maistre[20] observes, must be fastened either upon the whole human race or upon no one at all. The Popes were not ahead of other men either in issuing penal decrees against sorcerers or witches, nor in sentencing individual delinquents. They were the children of their age, and acted accordingly. We know now how much is purely natural which even the most enlightened men of their age formerly accounted supernatural. In the Middle Ages the crime of magic occupied a large share of the attention of the learned.[21] No Christian can assert diabolic influences upon mankind to be absolutely impossible, nay that they are possible is shown by Scripture and tradition;[22] therefore the error was not one of principle; it existed only in the manner of treating particular manifestations, and for this subordinates only are responsible. Huber makes it a strong point that the patriarchs of the East laid no claim to be God's infallible vicegerents. We reply, that the question of the judicial persecution of witches has no connection with the infallibility of the teaching office; and Pichler shows that the Byzantine patriarchs undoubtedly did make this claim. The prerogative of infallibility is plainly asserted in an epistle of the Patriarch Isaias (1323–1333);[23] and we find the Byzantines claiming for their Church the prerogatives of the Church of Rome.[24] They call the Church of Constantinople 'the Mystical Sion, the Mother of all Churches, the New Jerusalem,'[25] 'the Author of Faith,'[26] 'the sublime resting-place, whence issue the fountains of pure doctrine that flow over the whole earth.'[27] Their patriarchs give themselves amongst other titles those of Universal Teacher of all Christians and Vicar of Christ.[28]

There is sufficient proof that the Popes had very little to do with the persecution of witches, and did not instigate or excite them; but on the contrary, as Görres says, 'acted always with leniency and moderation.' Had they delighted in the opportunity, the codes of canon law would not have treated the subject so sparingly, and Papal decrees would have afforded a far richer prey to modern critics. Laws and their application are

two widely different things in the administration of justice, whether civil or ecclesiastical.

[1] Others might be cited until the Synod of Magdeburg, 1390, c. 45 (Hefele, vi. p. 837), which decreed severe punishments against sorcerers. For examples of sorcery in the time of the Carolingians, vide Dümmler, Ostfränkische Geschichte, ii. p. 673, n. 79 ; i. 466, 329.

[2] Neander, Kirchengeschichte, ii. p. 380, n. 3 ; Greg. VII. Ep. 21. For passages from the Fathers, vide Gratian, c. xxvi. q. 5 ; also apud Görres, Mystik, iii. p. 44 seq. Cf. Greg. M. l. xi. Ep. 33 ; Jaffé, n. 1403, c. viii. c. et q. cit. As to Scripture, besides Levit. xx. 27, who has not heard of the history of the Witch of Endor, of the controversies concerning the *spiritus pythonicus*, and the possessed in the New Testament?

[3] Psellus, de Daemonum Energia (Migne, PP. gr. t. cxlv. p. 819 seq.), treats (c. vii.) of the appearances of demons amongst men ; c. xi. p. 844, of the possession of the latter by the former ; c. xiii. p. 849, of the entering of demons into men and animals ; c. xv. p. 833, of a possessed person at Elason who prophesied many things, and whom he himself brought to Constantinople ; c. xix. p. 864, of the apparition of demons at births, &c. Cf. Blastare's Synt. Alphab. Lit. M. c. i. (Migne, l.c. p. 1 seq.).

[4] Acta Patriarchatus Cpl. ed. Müller et Miklosich, t. i. doc. 79, 80, pp. 180-182. Migne, PP. gr. t. clii. p. 1224 seq.

[5] Acta, t. i. doc. 85, pp. 184-187. Migne, l.c. p. 1228 seq.

[6] Acta, t. i. doc. 86, pp. 188-190. Migne, p. 1230.

[7] Cf. the prop. Migne, p. 1231 : *Ποῖον γὰρ ἂν ἕτερον ἔργον ὑπὲρ τῆς δόξης εἴη κ.τ.λ.*

[8] Migne, p. 1229 : *ὥστε περιέναι αὐτοὺς καὶ ἀκριβῆ ζήτησιν ποιεῖσθαι ἐν ἑκάστῃ γειτονίᾳ τῆς βασιλευούσης ταύτης τῶν πόλεων.* The inquisitors are ordered *ζητῆσαι*, the magicians *καὶ εὑρεῖν καὶ εἰς μέσον ἑλκύσαι καὶ ταῖς πρεπούσαις ὑποβαλλεῖν κακώσεσι καὶ κολάσεσι*, p. 1231 D.

[9] Acta, t. i. doc. 134, 137, pp. 301 seq. 317 seq. Migne, l.c. pp. 1303 seq. 1320.

[10] Acta, t. i. doc. 153, pp. 342, 344. Migne, p. 1338 seq. Unfortunately the important conclusion of the document is wanting.

[11] Acta, l.c. doc. 228, pp. 488, 489.

[12] Ib. doc. 292, pp. 541-550. Migne, l.c. p. 1431 seq.

[13] Chrys. hom. 38, in Act. mentions books of magic (Migne, Opp. Chrys. ix. p. 275).

[14] Acta, t. i. doc. 305, p. 560.

[15] Ib. doc. 331, pp. 594, 595.

[16] Ib. t. ii. doc. 377, pp. 84, 85.

[17] I adduced numerous proofs in my work on Photius, vol. i. pp. 605, 609 ; ii. pp. 261, 263 ; iii. pp. 133, 674, 837, 839 seq.

[18] Theodor. Balsam. in Can. Trull. 61, p. 720 seq. ; in Basil. can. 83, i. p. 720 seq. ; ii. p. 801.

[19] Theophyl. Simocatta, l. i. c. xi. pp. 56, 57.

[20] De Maistre, Lettres sur l'Inquisition Espagnole, lettre ii. p. 53.

[21] Raban. Maurus, de Praestigiis Magor. (cf. c. 5, c. xxvi. q. 5). Joh. Saresbur. Polycrat. l. i. c. ix. seq. p. 406 seq. ; l. ii. c. xxviii. p. 472 seq.

Gerson, de Errorib. circa art. Magic, i. p. 211, says: 'Philosophy makes it probable, and the Faith makes it certain, that there are demons; a denial of their existence or power is an error against Holy Scripture; those, therefore, should be corrected who would make sport of theologians for this belief.' Also (Collat. de Angel. iii. 1483): 'Diabolic influences cannot be denied salva fidei integritate et rationis naturalis probabilitate' (vide Schwab, Gerson, pp. 711 seq. 718 seq.). Cf. also the Determinatio Fac. Theol. Paris, 1398; Du Plessis, Coll. Jud. t. i. P. ii. pp. 154-157.

[22] Cf. v. Schubert, Zaubersünden, Augs. Postzeitung, Suppl. 18 Jan. 1854; Civiltà Cattolica, 5 Maggio 1866, quad. 387, pp. 289-307.

[23] Acta Patr. Cpl. Vindob. 1860, t. i. doc. 71, p. 159.

[24] Pichler, Gesch. der kirchlichen Trennung, i. pp. 360, 361, § 45.

[25] Nicol. Methon. Orat. de Hierarchia, ed. Dimitracopul. i. p. 268. Cf. Phot. Orat. i. in Russorum Adventum, p. 209 seq. ed. Nauck.

[26] Nicetas Choniat. in Alex. Murzufl. n. 5.

[27] Thus Caerularius, in his Encyclica (Will, Acta et Scripta, p. 157), with the words of Photius. Cf. my work upon the latter, vol. i. p. 643, No. 11; vol. iii. p. 762, No. 7.

[28] Thus Nilus and Antony IV. in the Acta Patr. Cpl. t. ii. doc. 345, 347, 447. Similarly in the letters despatched to Russia in 1370, ib. t. i. doc. 264, 266. Cf. Photius, vol. iii. p. 806, No. 129, 130.

§ 20.

The case of Huss[1] is an example of the injustice of the charges brought against Popes for their manner of punishing heretics. His own confession and the decrees of the civil legislature show it, as also his condemnation at Constance by the reforming party, which was opposed to Papal rights. Unprejudiced minds are bound to confess 'that the moral horror awakened in us by the blazing pyres should not be directed entirely against the Popes and the Church in the Middle Ages, but against the ideas which governed the whole of mediæval society;'[2] and why not also against Calvin and the ideas which governed society at the time of the Reformation? We should have then to pronounce sentence upon the whole human race before the nineteenth century, and to exalt and glorify this alone. But the nineteenth century, in spite of its boasted humanity, is stained with cruelty, though this cruelty is hidden under new forms; and posterity may condemn our hypocritical concealment, as we condemn the unvarnished roughness of the past.

[1] Cf. Hefele, vii. p. 214 seq.

[2] Sigmund Riezler, on W. Berger's Johannes Hus und König Sigmund, Augsb. A. Z. Suppl. 21 April 1872.

ESSAY XVII.

THE CHURCH AND LIBERTY OF CONSCIENCE.

§ 1. Syllabus, prop. 16, 21, 77-79. § 2. What is toleration? § 3. Distinction between persons and principles. Syllabus, prop. 17. § 4. Truth and charity. § 5. Tolerance and intolerance in society. § 6. Demands upon the modern State. § 7. The State should not be without religion. § 8. The State must not allow absolute freedom to all forms of worship. § 9. Refusal and abolition of oaths. § 10. A State with no religion. § 11. Inconsistency of modern Liberalism. § 12, 13. Introduction of religious liberty, and respect for the equality of religions when once established. § 14-17. Religious liberty founded on untenable principles. Syllabus, prop. 15, 18. § 18. Liberty to err is liberty to do evil. § 19. The Church and the oath of allegiance to a constitution. § 20. Excommunication. § 21. Charge against Innocent XII. § 22. The massacre of St. Bartholomew. § 23. Complaints against the Bavarian Constitution. § 24. The French Charter of 1814. § 25. Consistency of the Catholic Church.

§ 1.

THE Catholic Church must, with St. Peter (2 ii. 1 seq.), condemn those who bring in sects of perdition (heretics), lying teachers, who bring upon themselves swift destruction. She claims, and must claim ever and everywhere as a necessity of her existence, that her doctrine is of God and of Christ. Wherefore she can admit no right to gainsay the divine revelation intrusted to her, nor even the right to remain indifferent towards it. The proposition once established that there is only one true Church, out of which there is no salvation, also the proposition that this Church can only be the Catholic Church, man's welfare demands that all attempts to withdraw him from the pale of this Church should be firmly resisted.

Hence we see the consistency of the condemnation of these propositions of the Syllabus: 'Men may in any religion find the

way of eternal salvation and obtain eternal salvation;'[1] and 'The Church has not the power of defining dogmatically that the religion of the Catholic Church is the only true religion.'[2] From this point of view, too, it was quite necessary to condemn these further propositions, that 'It is no longer necessary that the Catholic religion should be held as the only religion of the State, to the exclusion of all others;[3] hence it has been wisely provided by the law, in some countries called Catholic, that persons coming to reside therein shall enjoy the free exercise of their own worship;[4] moreover, it is false that the civil liberty of every mode of worship, and the full power given to all of overtly and publicly manifesting their opinions and their ideas, conduce more easily to corrupt the morals and minds of the people, and to the propagation of the pest of indifferentism.'[5]

We must accurately distinguish the condition of the Catholic State where unity of faith prevails from those States in which this unity has long been absent.[6] We must distinguish the question of preserving to Nonconformists in a State the rights they have acquired from the question of what rights they are to receive first of all. We must distinguish the principles on which the Church acts from those on which modern governments act. We must distinguish religious or dogmatic toleration from civil and political toleration.[7]

[1] Syllab. a. 1864, n. 16 (Enc. of 9 Nov. 1846 and 17 March 1856. Alloc. 17 Dec. 1847).

[2] Syll. n. 21; Multiplices inter, 10 June 1851, against Vigil's book.

[3] Syll. n. 77 (Alloc. 26 July 1855, concerning Spain). Cf. Ketteler, Deutschland nach dem Kriege v. 1866, Mainz, 1867, p. 136 seq.

[4] Syll. n. 78; Alloc. 27 Sept. 1852, on New Granada. Cf. Ketteler, l.c. p. 138 seq.

[5] Syll. n. 79; Alloc. 15 Dec. 1856, on Mexico. Cf. Ketteler, l.c. p. 141 seq.

[6] Cf. Ketteler, in the reply to the Köln. Zeitung of 23 April (Mainzer Journal, 2 May 1871).

[7] It is one of the 'ideals' of modern Liberalism that the State as such shall be indifferent to all religious truth; that it shall not merely tolerate but protect every creed and every error; that it shall further the multiplicity of forms of worship, and concede to every citizen an inalienable right of unlimited liberty of belief, conscience, and worship. Locke has greatly promoted this view. He acknowledged a letter, printed first in Latin in 1698, and in French in 1710, in favour of universal toleration (Le

Clerc, Biblioth. Univers. t. xv. p. 403) in his will to be his work (Jean Barbegrac, Notes sur le Droit de la Nature et des Gens du Baron de Pufendorf, l. vi. chap. iv. § 10. *Cf.* Noodt, dissert. de Religione ab Imperatorio Jure Libera, French ed. 1707). They were principally English and French free-thinkers and philosophers who upheld this view, in Germany in particular Teller, Semmler, Bahrt, Lessing. Many works were written on this subject in these countries down to Jules Simon's La Liberté de Conscience, Paris, 1857. On these various works on toleration see Döllinger, Kirche und Kirchen, p. 68, Eng. ed.

§ 2.

'Catholic intolerance' is a catchword of the Liberals, and one which stimulates the anger of modern Liberalism against the Church. What is toleration? The Spanish philosopher Balmez thus defines this misused word:[1] 'Strictly speaking it means the patience with which we suffer a thing we judge to be bad, but which we think it desirable not to punish. Thus some kinds of scandals are tolerated; such and such abuses are tolerated; the idea of toleration is always accompanied by the idea of evil. It would be absurd to speak of tolerating virtue or goodness. Toleration exercised in the order of ideas always presupposes an intellectual error or fault. No one will say that he tolerates the truth. We may *tolerate* opinions which appear to us manifestly erroneous; but we can *respect* them only when we are not certain of their contradictory, when they are founded upon good arguments, as, for example, on hypotheses scientifically justifiable. To respect opinions also sometimes means to respect those who hold them for their good faith or for their good intentions.[2] A man is called *tolerant* when he is able to bear opinions contrary to his own without irritation or disturbance. Toleration or intolerance may be found in the sceptic and in the devout. St. Francis of Sales was tolerant; Voltaire excessively intolerant.' 'The tolerance of a religious man arises not from want of faith; it may coexist with a burning zeal for the spread and preservation of the truth; it is born of two principles, charity and humility.'[3] Charity hopes all things from all men, and looks always on the best side; it would always hope that those in error were not guilty of the error; humility induces forbearance towards our neighbour.

[1] Protestantism and Catholicity compared, c. xxxiv. Eng. trans. London, 1849, p. 151. Professor Merkle (Die Toleranz nach Kathol. Principien, p. 4) justly says: 'There is scarcely any word used so foolishly and thoughtlessly as the word toleration. Things have been confused with persons, religious conviction with religious indifference and scepticism, the objective with the subjective, formal or voluntary error in matters of faith with material or involuntary error, and thus sin with evil or misfortune. The same rights have been claimed for error as for truth. Opposition of principles has been said to be mere opposition of forms; a mere diversified manifestation of the same principle. To be indifferent in religious matters, to betray religious truth, to lull into false security, to recognise and favour what is known to be untrue, to be frivolous and superficial in religion, to be without principle and without conscience—all this has been called praiseworthy toleration.'

[2] Balmez, l.c. p. 151.

[3] Ibid.

§ 3.

The Church has always recognised that people might live in error of faith and yet be saved;[1] that they might be in unconscious spiritual communion with the true Church, although through invincible ignorance they were not in external communion with her;[2] that condemnation regarded false *principles*, not the *persons* in error;[3] that towards these all the duties of brotherly love were to be exercised, and that no Catholic had the smallest right to impute guilt to them.[4] Pius IX. teaches the same thing. In the Allocution of the 9th December 1854 (the same which condemns the proposition that there is *good* hope of the eternal salvation of *all* those who are not in the Church of Christ)[5] the Pope solemnly declares:[6] 'Far be it from us to dare to set bounds to the boundless mercy of God; far be it from us to desire to search into the depths of the hidden counsels and judgments of God, an abyss that the mind of man cannot explore. . . . We must hold as of faith that out of the Apostolic Roman Church there is no salvation; that she is the only ark of safety, and whosoever is not in her perishes in the deluge; we must also, on the other hand, recognise with certainty that those who are in invincible ignorance of the true religion are not guilty for this in the eye of the Lord. And who will presume to mark out the limits of this ignorance according to the character and diversity of peoples, countries, minds, and

the rest? Doubtless when, divested of the bonds of our mortality, we see God as He is, we shall comprehend how beautiful and how close is the union between His justice and His mercy; but whilst we linger in our earthly abode, burdened by our bodies, let us hold firmly to the Catholic belief that there is one God, one faith, one baptism; and that to inquire further is not lawful. But as charity demands, let us be frequent in prayer that all nations may turn to Christ, and with all our strength let us labour for the salvation of all men; for the arm of the Lord is not shortened, and the gift of divine grace will never be refused to those who ask in all sincerity for its enlightenment.' In the same way the Encyclical to the Italian bishops, 10th August 1863, says:[7] 'It is known to us and to you that those who are in invincible ignorance of our most holy religion, but who observe carefully the natural law and the precepts graven by God upon the hearts of all men, and who being disposed to obey God lead an honest and upright life, may, aided by the light of divine grace, attain to eternal life; for God, who sees clearly, searches and knows the heart, the disposition, the thoughts and intentions of each, in His supreme mercy and goodness by no means permits that any one suffer eternal punishment who has not of his own free will fallen into sin.' Notwithstanding these words there are some who have ventured to describe the following as Papal doctrine: 'To whoever refuses submission [to the authority and government of priests] all his strivings after truth, all his moral conduct, all his fulfilment of the highest command of charity towards God and his neighbour, avail nothing; he is subject to the wrath of God and eternal damnation.'[8] Where has the Church taught that 'he who submits to the hierarchy, invokes their aid, lets them give him their spiritual treasures, although he troubles himself not at all to know the truth, and has broken or contemned all commands, divine or human, may rejoice in the certainty that by means of the Church he will attain salvation'? The doctrine of the Church is quite the contrary, and against the certainty of the Lutherans, deduced from their doctrine of *sola fides justificans* (justification by faith alone), the Church has always taught the

uncertainty of salvation even for the faithful.[9] Can, then, misrepresentation go further than this?

[1] Aug. Ep. 162, ad Glor. (c. 29, c. xxiv. q. 3): 'Qui sententiam suam, quamvis falsam atque perversam, nulla pertinaci animositate defendunt, praesertim quam non audacia suae praesumptionis pepererunt, sed a seductis et in errorem lapsis parentibus acceperunt, quaerunt autem cauta sollicitudine veritatem, corrigi parati, cum invenerint, nequaquam sunt inter haereticos deputandi.' Cf. can. 31, ibid.; Reiffenstuel, tract. 4, de Virt. Theol. q. 2, n. 17, 19; Sporer, Theol. Mor. Praec. i. Decal. c. iii. sect. 2, ass. 2, § 2; Devoti, Jus Can. t. iv. tit. 4, § 1, 2, p. 40.

[2] Aug. Brevicul. Coll. c. Donat. die iii. Cf. Bellarm. de Eccl. Milit. l. iii. c. iii.; Suarez, de Fide, disput. 12, sect. 4, n. 22; Annot. in Schema de Eccl. c. iv. (Friedrich, Docum. ii. p. 119 seq.); Perrone, tract. de Ecclesia, P. i. sect. 1, c. ii. a. 4, prop. 2.

[3] Hettinger, Apologie des Christ. ii. 2, p. 93. Merkle, l.c. p. 39 seq.

[4] Every Catholic readily admits that very often people out of the Church are better than the system to which they feel or imagine themselves bound; just as *vice versâ* in the Church individuals are in theory and practice on the average lower than the system in which they live. Döllinger, Church and the Churches, Eng. trans. Introd. p. 17.

[5] Syllab. prop. 17.

[6] SS. Domini nostri Pii P. IX. Allocutio in Consistorio, 9 Decembris 1854, habita. Recueil des Allocutions, &c. Paris, 1865, p. 340.

[7] Ib. p. 480.

[8] Augsb. A. Z. Sup. of 3d Dec. 1871.

[9] Conc. Trid. Sess. vi. de Justif. can. 12-15, cap. ix.

§ 4.

Charity may call for any sacrifice, but not for a denial of reason or logic. Catholic truth cannot be sacrificed to Catholic charity. Charity cannot require that what is highest—the truth of revelation—should be made subordinate; neither can it regard truth and error with equal favour, nor accept error instead of truth. We may regret the error of another, and excuse it as being held in good faith and ignorance; but so far as he is in error we cannot allow him to hope for salvation;[1] this would only strengthen him in his error and do him wrong; it would be contrary to the precept of Christian charity.

[1] Pelisson à Mme. de Brinon, 1690 (Foucher de Careil, Œuvres de Leibnitz, i. p. 79): 'Autre chose est excuser et plaindre quelqu'un et le regarder avec compassion, autre chose luy faire espérer le salut dans son erreur.'

§ 5.

Tolerance or intolerance may exist in governments and in society as in individuals, but this more as the effect of a habit than of a principle. Society is indebted for its prevailing spirit of toleration not to modern philosophers, who have had nothing new to say about it, but to the force of circumstances, the multitude of religious parties, to scepticism, to indifference, to the lassitude produced by wars, to greater gentleness in manners, to the improved means of travel and intercommunication amongst men, to the preponderance of material interests.[1] Philosophy upheld civil toleration; but its adherents went further. As Bossuet foresaw they desired ecclesiastical or dogmatic toleration, which is religious indifference.[2] Even if the former were conceded, the latter never could be from a Catholic point of view. For 'any ecclesiastical body conscious of being the depositary of absolute objective truth, and of holding the eternal destinies of the whole human race, must consider itself the only true Church, and all other creeds differing from its own as more or less in error. Therefore this Church must consider herself deputed to resist and refute all such creeds, and thereby to cause the true doctrine to prevail.'[3] This attitude, so natural and so necessary, which renders it impossible for the Church to come to terms with other religious opinions and parties, and renders her so dear and precious to her children, is precisely what causes the hatred felt for her by those without her pale.[4] So on this point as on many others, now as in her early days when the world was still heathen, her voice is raised in opposition to the spirit of the world. Religious intolerance, which the true Church firmly maintains, does not necessitate civil intolerance, which would permit no other religion to exist. However convinced any one may be of the truth of his own religion he may let others live in peace without belonging to it,[5] and fulfil towards them with joy and zeal all the duties of fraternal love expressly enjoined by the Catholic Church.[6]

[1] Balmez, p. 154.

[2] Bossuet, Hist. des Variations, Avertissement vi. sur les Lettres de

M. Jurieu, dern. part, n. 11, t. v. p. 165, ed. Paris, 1770: 'Si on se declarait ouvertement pour la *tolérance ecclésiastique*, c'est à dire qu'on reconnût tous les hérétiques pour vrais membres et vrais enfans de l'Eglise, on marquerait trop évidemment l'indifférence des religions. On fait donc semblent de se renfermer dans *la tolérance civile* . . . . leur dessein véritable est de cacher l'indifférence des religions sous l'apparence miséricordieuse de la tolérance civile.'

[3] Walter, Naturrecht u. Politik, § 488, p. 479.

[4] Bossuet, l.c. p. 155: 'On voit clairement, que ce qui rend cette Eglise si odieuse aux Protestans c'est principalment, et plus que tous les autres dogmes, sa sainte et inflexible incompatibilité, si on peut parler de cette sorte; c'est qu'elle veut être seule, parcequ'elle se croit l'épouse—titre que ne souffre point de partage. . . . Car c'est en effet ce qui la rend si sevère, si insociable, et ensuite si odieuse à toutes les sectes séparées, qui la plupart au commencement ne demandaient autre chose, si non qu'elle voulût bien les tolérer, ou du moins ne le pas frapper de ses anathèmes. Mais la sainte sévérité et la sainte délicatesse de ses sentiments ne lui permettait pas cette indulgence, ou plutôt cette mollesse; et son inflexibilité, qui la fait haïr par les sectes schismatiques, la rend chère et vénérable aux enfans de Dieu.'

[5] Against J. Rousseau, vide Balmes, l.c. note 392.

[6] Catechismus Rom. P. iv. c. v. § 1 seq.

§ 6.

Civil authority or civil government must be guided by public opinion and accommodate itself to society, that the government may be the true expression of the dominant ideas and feelings of the people. Any government which professes a definite religion and pursues fixed principles is more or less intolerant of those it does not profess. Two demands have been made upon the State to check this intolerance: (1) that the State should have no religion; (2) that it should grant perfect liberty to all conceivable forms of worship. Both these demands are in reality quite irrational.

§ 7.

The result of a government without religion is a State without God, and this filled even heathens with horror.[1] No State can exist without *law*, no law without *duty*, no duty without *God*. To acknowledge God is to grant the necessity of religion. God cannot be an abstract, impersonal, veiled Deity with no concern for the world. As the very notion of God requires that He should be a living, personal, perfect Godhead, so too reli-

gion cannot be indefinite, vague, and abstract, a conceit of man's device. It must rest upon God's revelation, must be perfect, concrete, and living; to seek it when they have it not, to guard it when possessed, is the duty of society and of individuals. It is immoral to be without religion; it is the same thing as to be irreligious. To require the rulers of the State to be without religion is to make the senseless demand that they should give a pernicious example to the people; it is also injurious to the rights of the Christian people, who have a right to Christian rulers. The State as such has duties towards God. A government that does not believe itself subject to God the Creator, and holds itself absolved from all religious duties, can never win the complete love and esteem of its subjects, neither can it have a permanent existence.[2] Civil authority should conduct rational beings by means of reason to goodness and truth, and to do this it needs the help of religion. It can never fulfil its exalted mission when it places truth and falsehood on a level, acknowledges no objective truth, no eternal divine law. Justice, which should have the State as her protector and servant, is more in truth than the mere repression of theft.[3]

[1] Cic. de Nat. Deor. l. i.: 'Pietate sublata fides etiam et societas humani generis et una excellentissima virtus justitia tollitur.' Or. pro Flacco: 'Sua cuique civitati religio est; Deum quippe natura venerari novit nec quisquam est homo, qui lege, quae haec praecipiat, careat.' De Legib. l. ii. c. vi. vii.; Plutarch, adv. Colotem. 31, p. 1125. Cf. also the speech of the French privy-councillor Portalis on the Concordat of 1801, apud Dupin, Manuel du Droit public ecclés. Français, Paris, 1847, p. 146 seq.; also Tüb. Theol. Quartalschr. 1832, p. 454; and Chilianeum, vol. vi. p. 194 seq.

[2] Liberatore, La Chiesa e lo Stato, c. ii. a. 3, p. 161: 'The Prince is either a delegate from God or from the people.'

[3] St. Augustine, de Civ. Dei, xix. 12, n. 1: 'An qui fundum aufert ei, a quo emtus est, et tradit ei,'qui nihil in eo habet juris, injustus est, et qui se ipsum aufert dominanti Deo, a quo factus est, et malignis servit spiritibus, justus est?'

§ 8.

Reason teaches, and all wise and learned politicians and jurists agree, that unlimited recognition or even toleration of all forms of worship cannot be required of any State.[1] No State

can be required to permit what will endanger its own existence and destroy the foundations of all social order. Yet there are sects and religions which would do this. Supposing a sect were to arise desirous of restoring the sacrifice of human victims or the Phœnician and Babylonian worship of Astarte, or of renewing the principles of the Anabaptists of Münster; or supposing that the Mormons, who are too much even for the Free States of America, were to establish themselves in Europe; who would dream of requiring that these sects should be tolerated or recognised by the State, or deny that the State not only might but ought to resist them by all the means at its disposal? But if the State had guaranteed absolute liberty of conscience and worship, by what right could it exclude these sects and prevent their growth? How would it fare with the State and human society if political crimes could take their stand on a religious foundation, if Proudhon's dogma—'Property is theft'—were to spread and become practical, if no sins of error could be made amenable to civil penalties?[2] But where is the line to be drawn?[3] A general principle is that the State should regard the natural truths and foundations of religion, the *praeambula fidei*, as the foundation of its own authority, and should prohibit the exercise of any religion that does not conform to these natural truths,[4] as civil laws are based upon a certain number of moral principles, based in their turn upon a belief in God and immortality.[5] Any religious society, before obtaining State recognition, should be required to profess reverence for God, loyalty towards the State, and pure morality.[6] The positive law of most States makes a distinction between acknowledged religions and unacknowledged sects, and places some limits upon religious liberty with regard to their doctrines, forms of worship, and constitution.[7] No liberty is granted to doctrines hostile to property, morality, and personal freedom, which entail the denial of civil duties or aim at a complete subversion of social relations; nor again to forms of public worship which are immoral forms; nor finally to religious constitutions which threaten the constitution of the State and the observance of the civil laws.[8]

[1] Trendelenburg, Naturrecht, § 172, note; Dahlmann, Politik, § 292-294;

Walter, Naturrecht und Politik, § 491, 497. This is acknowledged also by the Liberals Tagliaferri, in the treatise Catholicity and Religious Freedom (Rivista Universale of Genoa, quaderno 58, p. 383), and Froschammer (A. Z. 23 Nov. 1867), although the latter holds that a belief in the existence of God cannot be required by the State as a condition of civil and political recognition, because interfering in this question would be to enter upon the domain of the transcendental, and to decide upon a question where nothing can be known with clearness and certainty.

[2] Cf. Balmez, c. liii.

[3] This question is a very difficult and almost impossible one to answer when Catholicism is disallowed. The purely Catholic State has a simple answer, for it possesses the divine authority of the Church, and can rely implicitly upon that. Therefore revolution must begin by overthrowing the Church.

[4] Histor. Polit. Blätter, 1859, vol. xliv. p. 224 seq.

[5] Walter, l.c. § 498, p. 493 seq., with references to Trendelenburg, Dahlmann, &c.

[6] Thus the land-law of Prussia, Th. ii. tit. 11, § 13.

[7] Kunstmann, Grundzüge des vergleichenden Kirchenrechts, Munich, 1867, § 36, p. 107 seq.

[8] Kunstmann, l.c. § 23. Even in the latest revision of the constitution of the Swiss Confederation it was thought advisable in the National Assembly at Berne to establish such limits to art. 41 and 48.

§ 9.

A case of recent occurrence in Italy is very instructive. A certain Professor G. B. Ceraulo, being called upon to give evidence before a police-court in Palermo, refused to take the usual oath prescribed by law, on the ground that he being an atheist and materialist could invoke no Deity contrary to the clear dictate of conscience. The court refused to grant the objection, and instituted further proceedings against him. On the other hand, a Cavaliere Vergara who also refused to take the oath, because he believed in no religion, was merely dismissed by the court of assizes, and his evidence was dispensed with. These proceedings gave rise to various newspaper articles and pamphlets, which discussed the bearings of the question whether the oath should be retained or abolished. Many of these were edited by Ceraulo with his comments thereon.[1] Some argued that liberty of conscience justified the refusal of an oath, for it included the right to profess no religion or form of worship;[2] that a man's evidence might be unexceptionable though it were not sworn to; and that

as the law should be impartial, the best course would be entirely to abolish the oath, at least where it was a question of hearing witnesses before a court of justice. But does not this reasoning apply equally to the oaths taken by deputies,[3] electors, officials, and soldiers, who therefore might equally require the abolition of the oath? Others therefore demanded the entire abolition of the oath; whilst others again contended that to abolish the oath in favour of an atheistical minority would be an act of grave injustice towards the majority of the people, who regard the oath as the chief security for the administration of law and justice. Besides, they continued, it involves an absurdity. Theoretical atheism is impossible to a reasonable man;[4] hence any one alleging this as the ground of his refusal to take the oath should be dealt with as a disturber of public order, especially as the first article of the constitution still existing, though utterly broken through and disregarded in the rest of the public law of the kingdom, names the Catholic religion as the religion of the State; and laws can never quite dispense with divine sanction. But there is no doubt that in the new kingdom liberty of conscience has always been understood to exempt any one from a compulsory act of acknowledgment of God: consequently no one can be punished for refusing any such act; even atheists are supposed to act upon sincere conviction and in good faith; therefore in any case the abolition of the oath would be a consistent measure, especially nowadays when perjury is so frequent. Where God is left out of legislation the oath loses its true significance.[5] Paris in 1793 and 1871 has shown the world what happens when the State professes atheism, and sound reason could have taught us the lesson without these terrible experiences.[6] The State without religion misses all the blessings and securities that religion alone is able to impart. Walter's remarks are very just.[7] He says: 'No State can exist without religion. Religion tinctures every grade and rank of life with the spirit of duty. Religion values and sanctifies every just claim, whether of the high or of the low, of the strong or of the weak, and thus contains the true elements of the preservation of society. The religious oath consecrates the bonds of affection or of fidelity, by

which princes and peoples are mutually bound. Religion hand in hand with power completes, modifies, and enlightens the acts of government, or by earnest admonitions prevents abuses. She elevates subjects to the virtue of voluntary obedience. She stimulates mental activity, maintains nations in their youthful vigour, and prevents that drying up of their spirit and heart which would cause them to wither and decay. Religion is the foundation of the family, and of the discipline and reverence which the family produces. She serves justice by the oath which is an indispensable auxiliary to the investigation of the truth. On the battlefield she gives the soldier courage to die. She lessens the distance between the rich and the poor, by inculcating upon the former sympathy and active help, upon the latter gratitude and hope; she would soften and elevate all classes, and teach all to become better through resignation. Religion is therefore the true bond of the State, which keeps it together, fortifies it, and preserves it from degeneration.'

[1] Il giuramento nella procedura e la libertà nella coscienza; Tesi di diritto pubblico, Palermo, 1871.

[2] Of this description is the Society dei Liberi Pensatori in Italy and the Cogitanten in Germany. Civinini, one of their number, asserted in the Chamber (1869) that atheists and materialists could be quite good citizens (Atti uffiziali della Camera dei Deputati, p. 3644).

[3] The Deputy Salvator Morelli had already demanded the abolition of the deputy's oath.

[4] Cicero tells how Cotta said of Epicurus: 'Nec quemquam vidi qui magis ea, quae timenda esse negaret, timeret, mortem dico et Deos;' and Seneca says of the unbelieving: 'Mentiuntur, qui dicunt se non sentire esse Deum, nam etsi tibi affirment interdiu, noctu tamen et soli dubitant.' The same can be said of many 'bold thinkers' in modern times.

[5] Cf. the observations of the Civiltà Cattolica, quad. 508 (19 Ag. 1871), ser. viii. vol. iii. pp. 455-459.

[6] Leibnitz, Ep. Censor. c. Pufendorf, § 6. Montesquieu, Esprit des Lois, l. xxiv. c. vi. (against Bayle). Guizot, De la Démocratie en France, 1849, c. vii.

[7] Walter, l.c. § 262.

§ 10.

Should, then, the State lightly and unnecessarily abandon this bond by encouraging the formation of sects, and favouring rebellion against religious authority? Surely the authorisation

of every form of worship is a grave injustice in purely Catholic countries like Spain and South America—to which countries propositions 77, 78, and 79 of the Syllabus refer. The unity of the nation in faith is too great a benefit for the State to be sacrificed without necessity;[1] and where only one religion exists the State has duties towards it, and should protect it, as far as possible, from attacks and divisions.[2] The reason alleged in New Granada, an increase of material prosperity, was on the one hand problematical, and on the other hand, even if realised, not to be preferred to the advantage of religious unity, which also would have turned to the advantage of the State. General and unlimited freedom of worship is mischievous and objectionable, even from the point of view of the State interests. As long as an ethical character is given to the State, as long as it is looked on as a something more than a mere instrument to material prosperity, it cannot put material goods above all others. So long at least as the State believes in any first principles of reason and morality it must not surrender them without necessity; and so also where it believes in the Christian principles, and society rests on them, it must not without necessity sacrifice them. There is an old saying not easily gainsaid: *Regula operandi dependet a regula credendi.* If the *regula credendi* allow full room for the caprice of each individual, nothing good, unless men are better than their principles, can be expected from the *regula operandi.* How many crimes may be committed under the cloak of religion![3] What right has the State authority to punish them, having adopted the principle of complete religious liberty, and abandoned the right of punishing intellectual errors? We might ask the government: What right have you to punish a man, who, because he does not acknowledge that there is a God, cannot hold himself guilty in His sight, neither therefore in yours? You have laid down the law by which you punish him, but in the eyes of this man your law has no force, for you are only his equal, and he recognises the existence of no superior being who has conferred upon you the right of touching his freedom. What right have you to punish this other, who is convinced that all his actions are only the effects of necessary causes,

and that free-will is a delusion; who believes, therefore, that he was as unable to help committing the act which you call a crime as the wild beast is unable to refrain from seizing the prey that is before him, or attacking another beast with which he is infuriated? What right have you to punish one who maintains that morality is a lie, that self-interest is the only true morality, that the difference between good and evil is to understand or mistake your own interest? If you punish him, still his conscience does not tell him he is guilty, and he will take the punishment as having befallen him because he was out in his reckoning, and had not sufficiently calculated the chances of success. These are the necessary and inevitable consequences of a doctrine which denies to public authority the power of punishing crimes committed through false opinions.[4] It may be said: This right of punishing exists only in regard to deeds; as far as doctrines are concerned the individual should be absolutely free. We reply: That merely the internal workings of a man's mind, which no earthly power can reach, are not doctrines;[5] doctrines are precepts openly taught and propagated amongst other men; that the question is not one of inward liberty of conscience, but of outward religious liberty; that every one is bound to *act* according to his own conscience and belief; and that the difficulty remains of how a government that has granted absolute liberty to conscience and subjective conviction can justly punish an act commended or justified by the conscience of the perpetrator.

[1] Walter, Kirchenrecht, § 56; Naturrecht und Politik, § 496, p. 490 seq.

[2] Hugo Grotius, de Jure Belli et Pacis, l. ii. c. xx. n. 51. Domat, Droit Public, l. i. tit. 19. Montesquieu, Esprit de Lois, l. xii. c. iv. v.; xxv. c. x. Pey, De l'Autorité des deux Puissances, t. iv. P. iv. c. i. ii. Frayssinous, Conférences sur les Principes religieux, t. i. et iii. Cf. Bellarm. de Membr. Eccl. Milit. iii. 18; Suarez, de Fide, disp. 20, sect. 3; disp. 23, sect. 1.

[3] When Charles I. of England was beheaded in 1649 as a 'rebel' proofs were adduced from Scripture to show that monarchy was to be rejected, and that the king was the beast of the Apocalypse; and when the parliament appeared dilatory to zealous Puritans in proceeding against the 'royal serpent,' the Bible preachers declared that bad representatives of the people should be destroyed with rat's-bane. When it was desired to extirpate the Irish with fire and sword, the Scriptural example of the Amale-

kites was ready to hand. Human passion, obstinacy, and folly have weapons always ready in men who have risen in rebellion against the truth.

[4] Balmez, p. 158.

[5] De internis non judicat praetor. Cogitationis poenam nemo patitur.

§ 11.

There is no inconsistency in the Catholic view of the question. The inconsistency is on the side of modern Liberalism. The latter declares all, or nearly all, errors of the intellect to be guiltless, and condones them with extraordinary indulgence. The former maintains that some errors of the intellect are crimes; that an error touching a truth of religion or morality is one of the gravest offences against God; that man's thought is free physically but not morally; and that it is his duty to seek, embrace, and retain divine truth under all circumstances and at whatever cost.[1]

The doctrine of unrestricted free thought involves the impossibility of committing sins of the intellect, and error must be henceforth excluded from the category of sins of which men may be guilty. But it is forgotten that to *will* we must *apprehend*, and that thus to will what is right we must apprehend what is true. If the source of so many evil affections of the heart lie in intellectual errors, it is man's duty to guard his intellect from error. But when every man is allowed absolute freedom of opinion, and may make choice of such opinions regarding faith or morals as recommend themselves to him,[2] then truth has lost its value, and very many hold themselves exonerated from the labour of seeking or attaining it. A lamentable delusion, one of the most terrible evils of modern society![3]

[1] Balmez, p. 158. He says further: 'The opponents of Catholicism have in the order of ideas confounded right with fact, declaring in this respect the uselessness and incompetency of all laws, divine and human. But this is the excess of folly. As though it were possible for that which is most noble and elevated in human nature to be exempt from all rule! As though it were possible for that which makes man the king of all creation to be an exception to the wonderful harmony of all parts of the universe with themselves and with God! As if this harmony could exist, or even be conceived in man, unless it were declared to be the first of human obligations to adhere constantly to truth!' Döllinger (Kirche und Kirchen, Eng. trans. Int. p. 3) refers to Niebuhr's words written on the 5th October

1830: 'If God does not marvellously help, there is impending over us a destruction such as occurred to the Roman world in the middle of the third century—the annihilation of prosperity, freedom, civilisation, and literature.' Döllinger adds: 'And we have proceeded much further on the inclined plane since then. The Powers of Europe have overturned, or suffered to be overturned, the two main pillars of their edifice—the principles of legitimacy and public international law.' After a lapse of ten years have not these words an augmented force? Have they not been terribly illustrated by the scenes in Paris during the spring of 1871? If in 1861 we had proceeded much further on the inclined plane, how do we stand in 1871 and 1872?

[2] This is exactly the signification of heresy, as Tertullian gives it, de Praescript. Haeret. c. vi. vii. According to Clem. Alex. Strom. ii. 11, opinion is the spiritual condition of heretics, ignorance of heathens, while certainty belongs to the Church alone. Cf. Hieron. in Gal. c. v. (c. 27, c. xxiv. q. 3).

[3] Balmez, p. 161.

§ 12.

But the cry will be raised: Is all development to be checked? are the Middle Ages to be brought back on the plea of saving society? Are all deserters to be ordered back into the one saving Church, and non-Catholics to be deprived of all their rights? These are idle objections, for no Catholic, whether layman or ecclesiastic, ever demanded or said this. It is true that the Church considers the grant of religious liberty an occasion of danger for the salvation of the souls of Catholics; but when members of other religious communions are in possession of this religious liberty, or where they have equal rights with Catholics, she does not approve the violation of these rights, even though she should get momentary advantage thereby. In countries where religious liberty has been long ago introduced, it may rightly exist and should not be abolished.[1] The Pope's condemnation of the *introduction* of religious liberty into an empire like Austria[2] is not inconsistent with this. Where religious liberty has been inevitably produced by the force of circumstances, and has been established by treaties or legislation, it may be accepted and recognised; but when it is needlessly proclaimed it looks like an invitation to sectarianism, and is perilous not merely to the salvation of souls but to the peace of the State.[3]

[1] Rintel, l.c. p. 124.

[2] As Huber asserted, p. 79.

[3] Pignatelli, Consult. Can. t. i. Cons. 143, n. 24, p. 190, ed. Venet.: 'Necessitudo cum haereticis noxia et periculosa est, non modo quoad salutem animarum, sed etiam quoad pacem et tranquillitatem politicam, quae sine fidei unitate conservari nequit. Ubi enim est publica animorum dissensio, quam introducunt haeretici, ibi pax publica esse non potest. *Vix firma esse possunt pacis jura inter quos est fidei bellum*, ait Ambrosius, l. iii. Offic. Hoc testatur ipsa veritas, cui exstant exempla, apud Becanum, de Fide, c. xv. n. 6; Legito, Justum Lipsium in libro contra Dialogistam de una religione; et Joh. Saresb. Ep. Carnot. l. vi. Polycr.' Earlier this was the general view of Protestants.

§ 13.

There are two quite distinct questions to be considered. The first is: Can a Catholic ruler conscientiously concede equal rights to other forms of worship; can he introduce religious liberty[1] where it does not exist, and under what conditions? The second: Is liberty of religion and worship once introduced to be respected and maintained, not merely by individual Catholics but by the Church? No Catholic theologian adhering strictly to Papal decisions could reply decidedly in the negative to both these questions. The first question should be answered thus: Religious liberty may be introduced when it is required for the common good, to prevent greater evils, or when it has become a necessity.[2] Nature itself prompts us to accept a lesser evil to avoid a greater,[3] and civil wars and constant discord would imperil the true faith and even the life of the State.[4] Older theologians, from the circumstances of the age in which they lived, thought that such cases would be very rare and exceptional; but they admitted the possibility, nay the reality, of their occurrence, and even acknowledged that they might receive Papal ratification, which they in general considered to be a necessity,[5] when such concessions were made to guard the rights of Catholics and the safety of the Church. But since those days circumstances are much changed.

Taking the circumstances of the present day into consideration, we do not hesitate to say: 'Theologians teach that a Catholic sovereign may conscientiously grant religious liberty to members of other creeds in two cases for the welfare of the people. The first occurs when to refuse religious liberty would be more in-

jurious than to grant it; the second when the grant would be accompanied with greater good than the refusal. These grounds are present in countries where Catholics and Protestants live mixed up together, holding constant intercourse with each other, for here religious liberty helps them to live together quietly and peaceably.'[6]

With regard to the second question, earlier Catholic authors,[7] as well as 'modern Ultramontanes,' teach that any liberties granted by law or treaty to other religious communions are always to be observed. As the *Civiltà Cattolica* says, this is not allowing that error as such has any just claim, 'but it means that those in error may have attained a legal right by constitutions sworn to, by express treaties, by long tradition, or customs that have acquired the force of law. When this has happened no one can doubt that Catholics as a body, and governments and all spiritual or civil authorities, are bound to respect this acquired right.'[8] The same reasons that warrant a Catholic ruler in tolerating other religions, and giving his sanction to liberty of worship, warrant him also in granting perfect equality in all civil relations. Of this equality the dissidents ought never again to be deprived; the rights secured to them by charter and oath must be respected in every case; and the accusation that Catholic doctrine teaches that no faith is to be kept with heretics is totally unfounded. The Church holds the precepts of the primeval moral law quite as sacred and inviolable as her dogmas, and good faith is one of the foundation-stones of Christian society.

[1] Scientifically we should have had to distinguish between liberty of conscience and of worship; but as our opponents only treat fully of the latter, a detailed discussion on this distinction as on others would be out of place.

[2] Thus the theologians in the Commentaries on St. Thomas, Sum. 2, 2, q. 10, a. 11. Devoti, Instit. Jur. Can. t. iv. tit. 6, § 7, p. 77, ed. 1794. Laymann, Theol. Moral. ii. 3, 12. Schenkl, Syntagma Jur. Can. § 342. M. Becanus, Duell. de Primatu Regio, l. iii. c. x.; also quoted by Schrader, de Unit. Rom. Freib. 1862, i. p. 32, note. Merkle, l.c. p. 24. Riess, Staat und Kirche (Laacher, Stimmen über die Encyclica, xii. § 204 seq.).

[3] The official letter from Cardinal Pacca to La Mennais, of the 3d Feb. 1832, designates liberty of worship as 'minus malum' under some circumstances. Beidtel, Das Canonische Recht, p. 653.

[4] Pelisson, l.c. says on this subject: 'Il faut bien tolérer la diversité des religions si l'Etat est perdu sans cela. Il faut bien de ne la pas tolérer s'il le peut sans perdre l'Etat, se souvenant toujours neanmoins de la charité, de l'humanité et que les supplices sont assez souvent des remèdes d'ignorant pour cette sorte de maux, et les irritent plutost qu'ils ne les guérissent.' Also in the report before the Parliament of Paris, of 26 Nov. 1610 (Du Plessis, t. ii. P. ii. p. 20), the edicts of Henry III. and Henry IV. were quoted in this sense: 'Edicts verifiez aux cours de parlement, qui tolèrent ceux de la religion prétendue réformée, parcequ'autrement on ne pourroit vivre sans troubles.'

[5] Suarez, de Fide, disput. 20, sect. 3, n. 21. Card. de Lugo, de Fide, disp. 19, sect. 2, § 4, n. 124. Albitius, de Inconst. in Fide, c. xxvii. n. 33. Bellarm. de Laicis, iii. 18.

[6] Merkle, l.c. p. 25.

[7] Molanus, de Fide Haeret. Serv. i. 29. M. Becanus, l.c. Tanner, Theol. t. iii. disp. 1, de Fide, q. 9, dub. 4.

[8] Civiltà Cattolica, 1864, ser. v. vol. x. p. 546 (in an article on the principles of 1789).

§ 14.

While statesmen of the present day estimate everything that comes before them from a political point of view,[1] the Catholic Church estimates and must estimate everything from a dogmatic point of view. This distinction is the source of innumerable misunderstandings and mistakes. The Catholic Church holds so fast to the purity of the faith, that she is forced to reprobate even an actual and established state of things if supported upon principles which are dogmatically false, or if it threaten to gain an entrance for an erroneous principle. The governments of the world, which have been more and more estranged from her, understand her language no longer, and being enchained by quite other and modern ideas are the less able to arrive at the logical consequences of her principles.

It is impossible for the Church to approve liberty of worship when the reason given for it is that every man has a natural and inalienable right to entertain and propagate any religious opinion.[2] Were this a true principle, the State would commit a grave injustice in imposing conditions upon or restricting liberty of worship or refusing it to any religious body; and moreover we should have to deny the value of the whole of God's revelation, and to open the door to all extravagance in religious

worship. The assertion must be condemned that every man is free to accept and confess the religion that appears to him true by the light of reason.[3] Such an assertion could only proceed from suppositions that are dogmatically false. Either there is no law at all to guide and regulate the consciences of men, or this law coincides with the subjective conviction of each individual conscience, or man has the right not to submit to such a law. All three assumptions are untenable and irrational from a Christian point of view. For we acknowledge a moral order, a law which directs consciences, an objective divine truth; moreover, this is independent of individual subjective conviction and superior to it, otherwise man becomes God, and we are led into pantheism; lastly, this law must be binding upon all, so that no true right can exist in opposition to this supreme rule. As man has no right to do evil, neither has he a right to think, teach, or spread evil, to defend or promote error;[4] otherwise why did Christ come into the world? How could He say, 'He that doth not believe is already judged'? (St. John iii. 18.) In the domain of religion and of ethics man has no right to contradict God, to accept or refuse His revelation. He may be physically free, but he is ethically bound. The denial of these propositions involves the denial of all supernatural revelation, of all the truths of Christianity, and the acceptance of the plainest rationalism. He who believes in the existence of God and in a divine revelation cannot reasonably hold that a creature may obey or disobey as he pleases the voice of his Creator. The rulers of our modern States proclaim loudly that the State should be founded upon moral principles, and as long as this is to be the case they cannot recognise this 'natural and inalienable right,' which must lead to the inevitable ruin of the State and of society.[5] In the sixteenth century the terrible consequences of this right were seen and estimated; there were as many opinions as individuals, the one as unreasonable as the other; and if any one may act according to his belief, he who is free to believe what he likes is also free to do what he likes.[6] Even if we disregard the corruption of human nature, which experience has made only too evident, and

which results from original sin and also from bad education and habits, what would become not merely of religious faith but of civil life when every crime might take the form of religion?

[1] The character of the nineteenth century is rather political than religious (Bluntschli, in Sybel's Zeitschr. p. 48). But, indeed, many political questions have always been closely connected with religious questions.

[2] Thus Binet (quoted by Bluntschli, St. R. b. ix. p. 513): 'La franche manifestation des convictions religieuses est un *droit* puisqu'elle est un *devoir*.'

[3] Syllab. prop. 15.

[4] M. Liberatore, La Chiesa e lo Stato, pp. 48, 55.

[5] Aug. de Civ. Dei, l. xix. c. xxi.: 'Ubi *homo Deo non servit*, quid in eo putandum est esse *justitiae*? Quandoquidem Deo non serviens nullo modo potest juste animus corpori, aut humana ratio vitiis imperare. Et si in homine tali non est ulla justitia, procul dubio nec in hominum coetu, qui ex hominibus talibus constat. Non est hic ergo juris ille consensus, qui hominum multitudinem populum facit, cujus res dicitur esse respublica.'

[6] Stanislaus Hosius, Ep. ad Martinum Sboroneschi, Palatinum Posnan. ap. Raynald. a. 1560, n. 8: 'Postquam hanc nonnulli sunt opinionem secuti, ut putarent *licere sibi credere, quidquid appareat in eorum conscientia*, quorsum res perlata sit, vidimus: nam et nostris temporibus eadem dicere licet, quae suo saeculo dixit Hilarius: *Periculosum admodum atque miserabile est, tot nunc fides existere, quot voluntates, et tot nobis doctrinas esse, quot mores, et tot causas blasphemiarum pullulare, quot vitia sunt, dum aut ita fides scribuntur ut volumus aut ita ut volumus intelliguntur, et cum secundum unum Deum et unum Dominum et unum baptisma etiam fides una sit, excidimus ab ea fide, quae sola est, et dum plures fiunt, ad id coeperunt esse ut nulla sit.* Dominatio vestra non procul abest a Pinczovia, ubi ante annos jam prope decem istud cacangelium potius quam evangelium cepit originem; nonne ipsi ejusdem ilius scholae magistri se mutuo vocant haereticos? Certe Stancarum (cf. Schröckh, K.G. seit der Reform. iv. p. 584 seq.) parum abfuit, quin flammis traderent, qui tamen non major est haereticus, quam ii, qui diversum ab eo Pinczoviae sentiunt. . . . Sic fieri necesse est, quando *quisque sibi liberum esse vult*, non quod Ecclesia Cath. vult et docet, sed *quod sibi apparet in sua conscientia*, credere. Apparet uni in sua conscientia, quod non debeat esse neque sacerdotium neque sacrificium, qua ratione *Deus ipse quodammodo in ordinem cogi videtur*. Apparet alii falsum esse, quod Christus dixit: *Hoc est corpus meum*, sed significare tantum *corpus* esse figuram vel virtutem corporis. Apparet tertio, quandoquidem dixit Christus: *Qui crediderit et baptizatus fuerit, salvus erit*, propterea parvulorum baptismum nihil valere et eos dixit esse rebaptizandos. Apparet quarto, quandoquidem a propheta Scriptum est: *Audiam quid loquatur in me Deus* et rursus: *Beatus vir, quem tu erudieris, Domine* et ipse Christus docuerit: *Nolite plures fieri magistri, quoniam unus est magister vester in coelis*, non esse fidendum Scripturis, multo minus autem ferendum esse externum verbi s. praedicationis ministerium, sed de coelo revelationes exspectandas, ut ille nos

doceat, qui solus est verus magister. Sed quorsum attinet enumerare singula? Si liberum erit unicuique credere, quod apparet in illius conscientia, tot erunt fides, quot voluntates, *nec ulla est certior et celerior ad interitum via, quam ut quod vult, cuique credere, quod vult, facere cuique liberum sit;* ibi enim nullus jam videtur esse magistratus, nulla legitima potestas.'

§ 15.

Neither can the Church approve of religious liberty being conceded on the ground of religious indifference, one religion being held to be as good or as bad as the other.[1] That would be as unreasonable as immoral, whether in society or in individuals.[2] It annihilates the distinction between orthodoxy and heresy, sets aside all ecclesiastical tradition, and condemns entirely the ancient Church.[3] John Quintanus, professor of canon law, spoke in these terms to Charles IX.:[4] 'Suffer not, O most Christian king, that such injustice be done to the Fathers, to whom we owe Christendom, as that they should be called foolish and their ordinances foolishness; mingle not Christians and those who are not Christians; for the Fathers say[5] that heretics are not Christians, and Theodosius II. and Valentinian III. (in 437) forbade them to use the name of Christian.' The various Christian sects cannot be regarded as forms of one and the same Christianity, agreeing essentially in the fundamental articles of their creed. The question is one of principles, not merely of forms; for any one to take upon himself to decide what part or portion of positive Christianity is essential and what is not essential is to hold himself superior to revelation, superior to divine authority, and so essentially and decidedly to oppose Catholic principles that no accommodation with them is possible. Protestantism, in spite of the many remnants of Catholic truth which it has retained, cannot be regarded as a different form of the Christian religion, and one in which man may please God as well as in the Catholic Church.[6]

[1] 'He who begins by holding all religions equally good, ends by holding them all equally bad.' Vide Raumer (Nivelliren).

[2] 'Quod in singulis, id est in populis.' Cic. de Rep. iii. 18. Thom. de Reg. Princip. i. 15. Bellarm. de Laicis, i. 18, n. 1; de Rom. Pont. v. 7, n. 5.

[3] Cf. Merkle, l.c. pp. 20, 21.

[4] Ap. Raynald. a. 1561, n. 82. Concerning the petition of the Sorbonne of 1577, vide Du Plessis d'Argentré, t. ii. P. i. p. 449.

[5] Athan. Ep. ad Serapion, t. i. p. 266. Hilar. de Trin. l. ii. init. Ambros. in Luc. l. vii. c. xi. Aug. de Nupt. et Conc. ii. 31, c. Ep. Parmen. i. 7, de Util. Cred. c. xiv. n. 30. Enchir. ad Laur. c. v.

[6] Syllab. prop. 18, from the Encycl. of 8 Dec. 1849 to the Italian bishops, referring to the efforts to Protestantise Italy.

§ 16.

Again, the Church must condemn liberty of worship based on the ground that the best form of government, which all should aim at, requires the complete separation of Church and State. This separation has been often condemned by the Church;[1] it is contrary to the nature of things and the general welfare. And because in some unhappy circumstances it may exist as a necessity, it ought not to be proclaimed as an ideal; to dig up the roots which provide the State with life and vigour can scarcely be called the best form of government. Pius IX.[2] has expressly condemned the assertion, which contradicts both Scripture and the teaching of the Church that it is consonant with the best form of government and required by it, that human society should be constituted and governed without regard to religion, or at least without making any distinction between the true religion and false religions; that society is best off when the government recognises no duty of proceeding by penal laws against attacks upon the Catholic religion[3] except when public peace demands it. As Liberatore[4] observes, the Pope is not referring here to the *particular* hypothesis of this or that society which may, owing to long-established schism,[5] find it advisable to extend civil tolerance to all forms of worship, without any special protection to the true religion; but he lays down a general thesis concerning that form of State and of government most consonant with the divine idea and most conducive to the happiness of the people.

[1] Gregory XVI. Enc. 15 Aug. 1832. Pius IX. Allec. 27 Sept. 1852; Syllab. prop. 55.

[2] Encyclical of 8 Dec. 1864.

[3] Officium coercendi sancitis poenis *violatores* Catholicae religionis.

[4] L.c. c. i. a. 6, pp. 74, 75.

[5] 'Attese le divisioni religiose già in lei (nella società) *radicale*.' He also refers to the much-used parable of the wheat and cockle (Matt. xiii.). The lord of the field did not wish to deprive the cockle, which had already taken root, of growth, because the wheat would thus also have suffered. But this necessity, brought about by an enemy, he in no way declared to be the best condition. It was the lesser evil that served to prevent the greater.

§ 17.

It is wrong for a State that has been hitherto entirely Catholic to surrender its distinctively Catholic character, and no longer acknowledge the Catholic as the one State religion,[1] if this be done not to avoid a greater evil or attain a greater good, but because according to modern notions this is the right course to pursue. If this conduct were not wrong we should have to say that there is no harm in multiplying sects, and that religious unity is not a great good; that the State would not be bound to protect the well-won rights of the Catholic Church, nay, might abandon[2] her to attacks which the depravity of human nature and the arts employed to mislead it would easily render successful.[3] The Spanish diplomatist Castillo y Ayensa, on the subject of the often-projected changes in the constitution of his country, said:[4] 'The prohibition of other forms of worship is a natural and necessary consequence of the recognition of the Catholic religion as being the only true religion.[5] This can only be modified when circumstances not brought about by the legislator require the concession. In such a case it is lawful to respect and maintain the various forms of worship existing *de facto* in a country; but it would be a criminal act as well as an infatuation on the part of a legislator himself to destroy religious unity, to flood the country with a diversity of religious opinions, and exhibit to the people the sorry spectacle of his own entire want of religion. How strange it is that those should oppose religious unity who are so eager for all other kinds of unity—unity of constitution, of administration and commerce, of codes and tribunals, of coinage and weights and measures! They seek to build up new unities, but would destroy the unity that existed with the cradle of the monarchy,

which sufficed and ever will suffice to weld our country into a compact and indestructible whole.' The transformation of a Catholic State into one professing religious equality is attended with the gravest evils. All religion gradually declines in a country whose government professes none. Although the zeal of some chosen souls, the piety of a dynasty, the firm adherence of the people to the faith of their fathers may arrest the complete downfall of the religious life; still the majority will yield to temptation, especially when it comes to them from persons in power, overlaid with deceit and fair seeming, encouraged by theatres, romances, newspapers, and public meetings, and supported by the passions that lie dormant in the heart. The atmosphere is gradually poisoned; Catholics become first tepid, then cold, and at last to be without religion and without God. Especially in southern lands, like Spain and Italy, opposition to the Church leads, not to Protestantism but to atheism; everything by degrees becomes unchristian—laws, government, courts of justice, public and domestic life. If man's moral imperfection and the doctrine of original sin be mistaken or denied, there is no limit to liberty of opinion. Anarchy in idea leads to anarchy in practice, which bayonets may restrain for a time, but cannot permanently suppress.

[1] Merkle, p. 22.

[2] Ibid.

[3] Cf. Döllinger, Kirche und Kirchen, p. 81, trans.

[4] Castillo y Ayensa, Historia critica de las negociaciones con Roma desde la muerte del Rey D. Fernando VII. Madrid, 1859, vol. ii. c. vi. pp. 94, 95.

[5] Constitution of Cadiz, 1812, art. 12: 'La religion de la nacion Espagnola es y será perpetuamente la Católica, Apostólica, Romana, única verdadera. La nacion la proteje por leyes sabias y justas, y prohibe el ejercio de cualquiera otra.'

§ 18.

But it will be said that we should rely on the strength of truth, which, where there is free competition, will prevail over error. It will be asked: Is all confidence in truth gone, that truth, as the better commodity, will expel inferior ones from the market? But we can answer: Why, then, have you no con-

fidence in virtue, which is a far better commodity than vice? Why does a wise man use such care in choosing his servants and friends, the teachers, surroundings, and books of his children? Why does he not leave them free, since virtue far outshines vice, and is sure of triumph in a struggle? Why, since justice being a nobler and better commodity than injustice must prevail over it, does the State require, for public order and safety, policemen and law-courts, soldiers and prisons, penal laws and measures of repression? Why not leave justice and injustice free competition? The real truth in the matter is, that while we fully trust in virtue's own strength and the triumph of justice, we cannot trust to the individual man, whose understanding is often very weak, limited, and misled, and whose will is often still weaker, perverted, and evil. It is a mistake to compare the subjective with the objective, and to consider man, not as he is but as he might be. That the better commodity be chosen it must be recognised as better, and the cost not be thought too great. The understanding can easily find out amongst material things which is the best commodity, and the will immediately inclines to acquire it; but in the moral domain there are many difficulties to be overcome, for the judgment is easily corrupted and misled, as well as the will, which can be swayed and dominated by passions. This is especially the case in the domain of religion. Christianity needed miracles to overcome the Pagan world; but is the miraculous to become the ordinary course of nature, or is God continually to work miracles simply for the convenience of those who nowadays proclaim religious liberty? If so many errors and so many crimes are committed in spite of all that religion and the State can do for their prevention, what would not be the condition of things if the system of rationalism met with universal recognition?[1] In many Catholic countries the free competition of other religions might very possibly arouse and reanimate those Catholics who had become torpid and too easy-going. In many towns this would certainly be the case. Thus good *de consequenti* would arise. But we must follow the principle laid down by the Apostle: we must not do evil that good may come.

A government would be very unwise to promote evil with the ultimate object of some possible good. God may send or permit salutary trials, but man is not therefore authorised in countenancing evil. Liberty to err is liberty to do wrong; it is the death of the soul.[2]

[1] Liberatore, l.c. pp. 55-59.
[2] Aug. ap. Greg. XVI. Const. cit.

§ 19.

Thus we must reject all the views of religious liberty discussed in the preceding five sections. Our Lord willed that there should be one Faith, and forbade that it should be divided. He willed that there should be one Shepherd, one fold, one Church, one baptism: without unity of faith this could not be. He desired care and watchfulness against false prophets, who could not be absent if there were many religions. He willed a Church that should be one, and that should last for ever, against which the gates of hell should never prevail, and this is inconceivable without unity of faith.[1] We are told that if this view be true, 'it alone is enough to prevent any Catholic ever again swearing allegiance to any modern constitution without thereby violating his conscience.' We must here make a distinction. A constitution may declare religious liberty, either as a dogmatic principle to be held by all, or only as a fact existing in the positive law of the country. In the former case this oath, like any oath that required a denial of the Faith, would be inadmissible. In the latter case, when no claim was made over the religious convictions of the Catholic, the oath might be taken in any country where a number of denominations actually existed, and equal rights were conceded to them by law and treaty. The twelfth canon proposed to the Vatican Council ought not to be introduced here, for it belongs to another connection: 'If any one says that to this Church by Christ our Lord and Master was given only the power to lead by counsel and persuasion, and not to command by laws and restrain and compel the erring and obdurate by external courts of judgment and salutary punishment, let him be anathema.'[2]

Our opponent seems to be unaware that essentially the same thing was said in a dogmatic Bull of Pius VI.,[3] and that the Church at all times ascribed to herself a legislative, judicial, and executive authority and thereby a coercive authority. Has he read and disproved the proofs of this adduced by theologians and canonists?[4] In 1617 the Sorbonne declared the doctrine of the apostate Marcus Antonius de Dominus, in so far as it denied the true jurisdiction of the Church—that is, her coercive authority and right to external submission—to be heretical, subversive of the whole hierarchical order, and introducing a Babylonian confusion into the Church.[5]

[1] From this it follows that canon 6 of the projected Schema de Ecclesia Christi was completely justified, which condemned the propositions: 'The intolerance with which the Catholic Church proscribes and condemns all religious sects separated from her communion is not prescribed by the divine law;' and 'Man cannot have certainty but only opinion as to the truth of religions, and therefore all religious sects are to be tolerated by the Church.'

[2] Friedrich, Doc. ii. p. 103.

[3] Pius VI. Const. Auctorem fidei, 28 Aug. 1794, prop. 4, 5 (Denzinger, Enchir. p. 389, n. 1367 seq.): 'Propositio affirmans, *abusum fore auctoritatis Ecclesiae, transferendo illam ultra limites doctrinae et morum et eam extendendo ad res exteriores et per vim exegendi id, quod pendet a persuasione et corde, tum etiam multo minus ad eam pertinere exigere per vim exteriorem subjectionem suis decretis;* quatenus indeterminatis illis verbis *extendendo ad res exteriores* notet velut abusum auctoritatis Ecclesiae usum ejus potestatis acceptae a Deo, qua usi sunt et ipsimet Apostoli in disciplina exteriore constituenda et sancienda, *haeretica;* qua parte insinuat, Ecclesiam non habere auctoritatem subjectionis suis decretis exigendae aliter quam per media, quae pendent a persuasione, quatenus intendit, Ecclesiam non habere collatam sibi a Deo potestatem non solum *dirigendi per consilia et suasiones*, sed etiam *jubendi per leges ac devios contumacesque exteriore judicio ac salutaribus poenis coercendi atque cogendi* (precisely the terms of this 12th canon), ex Benedicto XIV. in Brevi Ad assiduas, 4 Mart. 1755, primatibus, archiepiscopis et episcopis regni Polon., *inducens in systema alias damnatum ut haereticum.*' Cf. Johannis XXII. 1327, Const. Licet, contra Marsilium Patav. (Denzinger, l.c. p. 178, n. 427). Thus the Encyclica of 8 Dec. 1864 also condemns the proposition: 'Ecclesiae jus non competere violatores legum suarum poenis temporalibus coercendi;' in which, in the term *violatores*, as Merkle (p. 21, No. 3) rightly remarks, only by a gross misrepresentation can all non-Catholics be included. Syllabus, prop. 24.

[4] Suarez, de Legibus, l. iii. c. i. seq. Petavius, de Eccles. Hierarch. l. iii. c. ix. x. (against Claude Saumaise). Bennettis, Privileg. S. Petri vind. Romae, 1761, t. vi. a. 6, p. 550 seq. Bianchi, t. iii. l. i. c. v. § 1, 2,

6. Gerdil, Apol. Compend. del Breve, Super soliditate, Opp. xiii. pp. 127-130.

[5] Du Plessis d'Argentré, Collect. Judic. t. ii. P. ii. p. 105, prop. 2. Likewise the Faculty of Cologne, 1618 (ib. t. iii. P. ii. p. 193).

§ 20.

Huber, quoting the words of the Catholic theologian Kober,[1] exclaims against the terrible penalty of the anathema; but after having done so, he shows only too well that it had no terrors for him, any more than for non-Catholics. Whom does this anathema touch? Certainly not those non-Catholics who, without malice or obstinacy, remain in the errors transmitted to them from their parents. Excommunication is not, as Huber imagines, 'a delivering up to eternal perdition,' otherwise it could not be employed in the Church as *poena medicinalis*.[2] It is in itself the penalty of exclusion from the Church, which leads, if it lasts and be incurred guiltily, to exclusion from the Kingdom of God.[3] When St. Paul (Gal. i. 8), in the words the Pope now uses, says, 'Let him be anathema who preaches another gospel,' he certainly did not intend to consign to eternal perdition those men for whose salvation he was ready to sacrifice his life—nay, to be himself anathema from Christ (Rom. ix. 3); on the contrary, he wished to guard them from the danger. The Church, in using the same words in her condemnation of false doctrine, has the same intention as St. Paul. What the Apostle said at that time of seducers who spread false doctrine amongst the multitude applies now to such seducers. If they persist in their obstinacy, they forfeit their salvation.

[1] Huber, pp. 82, 83, quoting from Kober, Kirchenbann, p. 17. Hase, Handb. der Prot. Polemik, p. 48, 3d ed. says: 'This (*anathema sit*), as used by the Jews, meant anything destined for destruction on religious motives. In the ecclesiastical sense it is not merely an exclusion from the Church, nor yet a hopeless exclusion from eternal salvation.' Cf. ib. p. 52.

[2] Cf. c. 37, c. xxiv. q. 3. The early Fathers distinguished between *excommunicatio mortalis* and *medicinalis*, *e.g.* Aug. serm. 351, de Poenit. The following regard the ban as spiritual death: Cypr. Ep. 62, ad Pompon. c. iv.; Aug. tr. 50, in Joh. n. 11, in Deut. q. 39; Innoc. I. Ep. 29, ad Conc. Carth. n. 8. Cf. c. 13, Qui filii, iv. 19: '*Mori* praecipitur, i.e.

per excommunicationis sententiam velut mortuus a communione fidelium separari.'

[3] Huber appears to have known little of Kober's work beyond p. 17. At pp. 238 seq. 280 seq. 290 seq. he might have found further information; likewise apud Ad. Wuttke, Handb. der Christl. Sittenlehre, ii. p. 627. Cf. Merkle, pp. 45-49.

§ 21.

It is quite a false assertion that Innocent XII. declared that the children of non-Catholics[1] should be forcibly taken from their parents, that they might be educated as Catholics.[2] The only ground for the assertion is that the Congregation of the Inquisition, not the Pope himself, designated (1694) an edict of Duke Victor Amadeus II. of Savoy as scandalous, impious, and irreligious, for abolishing the laws published for the protection of Catholics, and ordering some children, many of whom had come to the age of reason, to be returned to the Waldenses, from whom they had been taken and educated in the Catholic faith.[3]

[1] Benedict XIV. Const. Postremum, 28 Feb. 1747. Const. Probe, 15 Dec. 1751, enjoined the prohibition with reference to the children of unbelievers. I treated the Mortara case in detail in the Katholik, 1859, p. 64 seq.

[2] A. Z. Suppl. 19 June 1870, No. 24.

[3] Dom. Carutti, Storia del Regno di Vittorio Amadeo II. Torino, 1856, c. vi. pp. 82-90; c. vii. pp. 110, 111; c. x. pp. 138, 151; c. xii. pp. 117, 177-179.

§ 22.

Catholics have been upbraided times without number for the massacre of St. Bartholomew in 1572.[1] The reply has always been the same—that it was a political act, and had nothing to do with religious interests as such.[2] The Protestant theologians Andrea and Selneccius regard it in this light in their reports to Augustus Prince Elector of Saxony.[3]

The French Huguenots were, as a party, very dangerous to the court of France. They were a constant source of civil war, and it was their object to get the King Charles IX. into their power. Amongst other authors,[4] Buckle,[5] who has certainly no Catholic bias, states what is the undoubted fact—that the crimes

of the French Protestants were 'as revolting as those of the Catholics, and quite as numerous relatively to the numbers and power of the two parties.' Gregory XIII., we are told,[6] was not under the delusion that the massacre of St. Bartholomew was merely the bloody quelling of a plot against the king, and the thanksgiving services and demonstrations of joy were for the destruction of the heretics. Let us examine the events.

The first news of the death of Admiral Coligny and his followers was received in Rome on the 2d September, from a courier sent from Lyons by the secretary of the Governor Mandelot.[7] The Cardinal of Lorraine went to the Pope with the French ambassador to make him acquainted with the event, relating it, of course, from the point of view of the policy of France. On the 5th September M. Beauville arrived from Paris, with credentials from the king and despatches from the nuncio. The deed, as represented by the French court, was applauded in Rome, but it would, it was said, have been more praiseworthy had the king been able to proceed against the rebellious Huguenots in the proper judicial way.[8] Only too much credence was given to the regal message: it was long held undoubted also in other courts, even in the court of England.[9] Charles IX., whose object it was to represent the deed in the most favourable manner possible, had besought the nuncio not to despatch a courier until the royal message was prepared, and expressed the wish that his ambassador might be the first to bring the news to the Pope. Beauville represented to the Pope the danger and audacity of the plot that had been so fortunately frustrated, as well as the necessity for vigorous measures, and his story was confirmed by a letter from the Duke of Montpensier.[10] This was how the affair was understood in Rome. On the 5th September a *Te Deum* was sung in the church of St. Mark, in thanksgiving for the preservation of the royal family and of the Catholic religion in France; and on the 8th a solemn service was held in the church of the French nation.[11]

The service was not held in thanksgiving for the destruction of the heretics, but for the preservation of the king. Muret's famous speech also shows this plainly.[12] It is certainly false

that the massacre of the Huguenots was a long-premeditated act, of which Pius V. had been given previous information,[13] and the events which followed place this beyond doubt.[14] Gregory XIII. grieved deeply over the blood that had been shed, and expressed his horror at the deed some time after to a nobleman, even with tears.[15]

The violent measures adopted by Louis XIV. against Protestants met with as little approval in Rome. Innocent XI. openly disapproved of them, and through his nuncio in London, D'Adda, besought James II. to intercede with Louis XIV. in favour of the oppressed Protestants.[16]

[1] Hase, Handbuch der Prot. Polemik, p. 47, No. 9. A. Z. 29 Dec. 1869.

[2] Rintel, pp. 43, 44.

[3] Hutter, Concord. c. ix. seq. 143-152. Menzel, N. Geschichte der Deutschen, v. p. 40.

[4] Sismondi, Hist. des Français, xviii. 516, 517. Capefigue, Hist. de la Réforme, ii. 173; vi. 54. Smedley, Hist. of the Reformed Religion in France, i. 199, 200, 237. Cf. Döllinger, Fortsetz. von Hortig's K.G. ii. p. 584 seq.; Balmez, Catholicism, c. xxxvi.

[5] Buckle, Hist. of Civilisation in Eng. c. i. note 16.

[6] Huber, p. 54.

[7] Despatches of Vincent Parpaglia, ambassador from Savoy in Rome, d.d. 5 Sept. apud Cibrario, Archivio Storico Italiano, 1846, append. iii. p. 169.

[8] Parpaglia, l.c. Cf. Theiner, Annal. Eccl. cont. ad a. 1572, n. 36 seq. t. i. pp. 329-335.

[9] Cooper, Recueil des Depêches, Rapports, &c. Paris, 1840, t. v. pp. 120, 138, 161 seq. Theiner, l.c. n. 47, p. 46.

[10] Theiner, l.c. Mantissa, p. 336.

[11] Parpaglia, l.c. Maffei, Ann. di Greg. XIII. l. i. § 20.

[12] 'They' (the Huguenots), he said, 'hesitated not to plot against the head and the life of the king, from whom they had received, after so many grievous misdeeds, not merely pardon but a gracious and loving reception. But by God's providence, at the very time for its execution this conspiracy was discovered, and those things which these wicked men had designed for the king and the whole royal family were turned against themselves. O memorable night, which, by the death of some few rebels, freed the king from the peril of assassination and the kingdom from the ever-impending danger of civil war!' (Mureti, Orat. xxii. p. 177, ed. Ruhnkenii.) It should be noted that the first despatches of the Nuncio Salviati of the 24th and 27th August 1572 were not positively contrary to the French news, and Salviati only saw the matter more clearly in his later despatches of the 2d and 22d of Sept. Theiner, l.c.; Mantissa, pp. 328-331.

[13] Huber (p. 50), who refers to 'The Massacre of St. Bartholomew' in the North British Review, No. 101, Oct. 1869.

[14] Gandy (Revue des Questions historiques, 1866) has treated the subject in detail, and after him the Civiltà Cattolica (ser. vi. vol. viii. p. 679 seq.; vol. ix. pp. 267 seq. 662 seq.; vol. x. p. 268 seq.; vol. xi. p. 14 seq.), where the objections are duly considered.

[15] Brantôme (Vie de M. l'Amiral de Chastillon, Opp. viii. p. 190, ed. Haag, 1740) gives the words: 'Je pleure la façon dont le roy a usé, par trop illicite et defendue de Dieu, pour faire une telle punition, et je crains qu'il en tombera une sur luy, et ne la fera guères longue désormais.' Charles IX. died on 30 May 1574.

[16] Döllinger (Kirche und Kirchen, p. 72, Eng. ed.) cites Mazure, Hist. de la Révolution de 1688, Paris, 1825, ii. 126; Macaulay, ed. Tauchnitz, ii. 250. Cf. Ranke, Päpste, ii. p. 166; Raumer, Gesch. Europa's seit Ende des 16 Jahrh. vi. 206; Lingard, Hist. of England, xv. p. 89, Germ. ed.

§ 23.

Pius VII., in the Brief of January 19, 1819, to King Max Joseph of Bavaria, in which he expresses regret[1] at the retractation of the statement made by Cardinal Häffelin in the name of his sovereign on the 27th September 1818, distinctly declared that Catholics could not take unreservedly the constitutional oath without violation of their conscience.[2] The reasons of this were contained[3] in the *Fogli Dottrinali*, sent at the time to Munich. On this has been founded the assertion that Rome disliked to see all denominations on a legal equality, and disliked the equality of all classes before the law.[4] On the 10th November 1800 the right of settling in Bavaria, which had up till that time been a purely Catholic country, had, for the first time, been granted to Protestants. The parliament declared at that time, 'If unity and union is a fundamental law of the State, why should an exception exist in the case of religion? Bavaria enjoyed this unity in peace; the introduction of divisions with the multiplying of religions can procure no superior advantages. The unreserved acceptance of members of strange sects is a source of perilous discord, and the great cause of the development and antagonism of parties. Unity of religion, on the other hand, is a sacred bond, which unites all citizens at the foot of the same altar, which points out to all in brotherly love the same duties; which therefore, by identity of feelings and

agreement in religious conduct, can more than any other means secure order and peace to the State.'[5] This measure was at that time as little in favour with the people as with the Holy See, which stated its opinion on the subject in 1803 to the Elector of Bavaria.[6] The Prince Bishop of Trient, Count of Thun, complained that the toleration edict had extended toleration and equality to non-Catholics, even to those districts which had till then preserved themselves free from all heresy; so that if there were a sufficient number of misbelievers in those districts, they could have their pastors, service, churches, and schools, whence would arise great danger of the corruption of the Catholics; and thus it was desirable that the toleration edict should be revoked for purely Catholic districts; he said also that full toleration was not given to Catholics, and that their rights were violated.[7] In fact, as the bishops and vicars of the still existing dioceses said, in a remonstrance of 1816, liberty of conscience was actually restricted by the toleration edict, and especially the decree that no one under twenty-one years should change his religion was a wrong inflicted on every religion.[8] The *Fogli Dottrinali*[9] laid great stress upon this, as also did the later memorial of the bishops.[10]

In the mean time the circumstances of the Bavarian State were considerably changed, especially from the addition of new provinces, with populations partly of mixed religions and partly with a predominance of Protestants. The Holy See took note of these changes, and we find in the *Fogli Dottrinali* no protest against § 1 and 2 of the religious edict, which secure perfect religious liberty to all inhabitants, and forbid any constraint in matters of faith. We find complaints of the spirit of indifference pervading all the decrees in general of the religious edict; in particular of § 14, concerning the division of children of mixed marriages according to sex; of § 22, concerning the religion of foundlings; of § 18, concerning various cases of the change of religion of parents, &c.

[1] Vide the work Concordat und Constitutionseid der Katholiken in Bavaria, Augsb. 1847, appendix xi. pp. 241-243.

[2] Huber, p. 74.

[3] In the work cited, sup. xii. pp. 243-249.

[4] Janus, p. 39 seq.; see in answer Anti-Janus, pp. 25, 26. Huber has not the least weakened my statement.

[5] Concordat und Constitutionseid, p. 6.

[6] Ib. sup. i. p. 177.

[7] Ib. p. 10.

[8] Ib. p. 41.

[9] Ib. p. 246.

[10] Freisinger, Memorial of October 1850. On § 6 of the religious edict, cf. Silbernagl, Verfassung sämmtlicher Religionsgenossenschaften in Bayern, Landshut, 1870, p. 12, § 9, note 1.

§ 24.

The same scruples, occasioned by the religious edict of Bavaria, were earlier called forth by the French Charter of 1814, in which, although the Catholic religion was declared to be the religion of the State, equal liberty was granted to every one in his creed, and equal protection secured to all forms of worship.[1] The point objected to in Rome was not the civil toleration of non-Catholic religious bodies,[2] 'but their being given the same liberty and the same protection as the Catholic Church.' There was some apprehension lest Catholics by this constitutional oath should be forced to disregard divine and ecclesiastical laws, and that, as other religions were put upon an equal footing, naming the Catholic religion as the religion of the State was merely an illusion.[3] But it is a fact that the Holy See declared itself satisfied when the ambassador Count Blacas d'Aulps, in the name of his sovereign Louis XVIII., on the 15th July 1817, made the solemn and written declaration,[4] that the king, after he had declared the Catholic religion to be the religion of the State, was obliged to guarantee the followers of other religions already established in France the free exercise of their religion, and even to incorporate this in the constitution and in the oath administered to the king; but that this oath should do no injury either to the dogmas or the laws of the Church, since it referred only to those things which appertained to the civil authority, and that it would put no obligation upon his subjects that should be contrary to the law of God and of the Church.[5] In the Allocution of July 26, 1817, Pius VII. spoke of this declaration as perfectly satisfactory.[6] Pius VIII.

recalling this declaration sanctioned the Archbishop of Paris, on September 29, 1830, to take to Louis Philippe the formula of the oath of allegiance customary under Louis XVIII., and to say the prayers for him in the churches;[7] although the new constitution was in many ways more unfavourable to the Church than the old one,[8] and contained those grievances of the old one, which on the 4th of July 1824, Leo XII. had laid before Louis XVIII.,[9] especially in regard to the execution of former treaties, marriage laws, the *appel d'abus*, and other things. Neither also was the Belgian episcopate in the least kept back from recognising and observing the new constitution of Belgium.

[1] Charte, 1814, art. 5: 'Chacun professe sa religion avec une égale liberté, et obtient pour son culte la même protection;' art. 6: 'Cependant la religion catholique, apostolique et romaine est la religion de l'Etat;' art. 7: 'Les ministres de la religion catholique, apostolique et romaine et ceux des autres cultes chrétiens recevront seuls les traitements du trésor royal.' The Charter of 1830 retained art. 5 unchanged, omitted art. 6, which, according to Dupin's declaration of 7 Aug. 1830, had been abused, and took art. 7 with the following alterations as art. 6: (1) after the words *apostolique et romaine* was to be inserted, 'professée par la majorité des Français;' (2) the last words were to be altered into 'reçoivent des traitements du trésor public.'

[2] Huber, pp. 73, 74.

[3] The Bishop of Troyes (Mgr. de Boulogne), whom Pius VII. on the 30th April 1814 from Cesena commissioned to inform the newly-restored Louis XVIII. of the grievances of the Church in France (Artaud, Vie de Pie VII. t. ii. ii. c. xxvi. p. 68 seq.) had his attention called to many other points.

[4] The Secretary of State had desired a satisfactory letter from the king, but acknowledged that an official note would do as well. Duc de Richelieu to the ambassador, July 1, 1817. Artaud, l.c. t. ii. c. xxxvi. pp. 201, 202, Germ. ed.

[5] The same thing in French in Bullar. Rom. Cont. t. xiv. p. 377.

[6] Ib. pp. 362, 363, the chief contents are repeated by the Pope.

[7] Roscovány, Mon. ii. pp. 295-297, n. 335.

[8] Vide suprà, note 1. Louis Philippe swore on 9 Aug. 1830 before both Chambers: 'En présence de Dieu je jure d'observer fidèlement la Charte constitutionelle avec les modifications exprimées dans la déclaration, de ne gouverner que par les lois et selon les lois, de faire rendre bonne et exacte justice à chacun selon son droit, et d'agir en toutes choses dans la seule vue de l'interêt, du bonheur et de la gloire du peuple Français.' Charles X. had sworn at Rheims on 25 May 1825: 'En présence de Dieu je promets à mon peuple de maintenir et d'honorer notre sainte religion, comme il appartient au roi très chrétien et au fils ainé de l'Eglise, de rendre bonne justice à mes sujets, enfin de gouverner conformement aux

lois du royaume et à la Charte constitutionelle, que je jure d'observer fidèlement; qu'ainsi Dieu me soit en aide.'

[9] Cf. Scherer, Papst Leo XII. Schaffhausen, 1844, p. 136.

§ 25.

The Church has remained faithful to her old principles concerning religious liberty. She could not do otherwise; but States have changed theirs: some urged by pressing necessity have conceded to many religious denominations first toleration, then equal rights. The Church cannot condemn them for this proceeding. Others, however, have done the same thing without the necessity, and merely because they have adopted novel theories. In acting thus they have been wanting alike to their own interests and the doctrine of the Church, and have promoted the prevalent tendency towards the denial of all fixed principle.

The Church has guarded her dogmas without prejudice to any rights, and has condemned false principles without violating charity, which she proclaims and upholds, only not at the cost of truth. When the truth which she preaches arouses hatred against her she bears it with patience, throwing no veil over her doctrine, meeting reproaches with prayer, and enjoining her children to oppose Christian charity to the world's hatred. Thus too did Christ act with the Pharisees and Sadducees. He who was truth and charity gave His Church for all time a lasting example.[1]

[1] As to the censorship of books and publications, the Church from the earliest times (Acts xix. 19 seq.) has held it a sacred duty to condemn books dangerous to faith and morals. Vide Alphons. Liguori, Theol. Moral. t. i. l. i. append. iii. ed. Bassani, 1832, p. 154 seq.; Zaccaria, Storia polemica della proibizione de' libri, 1777; Devoti, Instit. Jur. Can. t. iv. tit. 7, p. 78 seq., espec. § 6, not. 1, p. 88 seq.; Fessler, Das Kirchliche Bücherverbot, Wien, 1858, pp. 27 seq. 39; Hausmann, Geschichte der päpstlichen Reservatfälle, p. 111 seq.; Phillips, Kirchenrecht, vi. § 324, 325. That civil laws have changed in this matter is no reason for the Church to surrender her principles; and just as she must reject unconditional liberty of religion and of thought, so also she must reject the unconditional liberty of the press, the alleged right of spreading publicly by word and writing every kind of opinion, and casting error in every form among the masses, whereby already many governments have been overthrown and indescribable disorder and disaster prepared. If our age thinks the poison a healing drug, the poison makes its deadly operation all the more evident. But here also Wisdom will be justified before her deluded children.

ESSAY XVIII.

CLAIMS OF THE POPES SINCE THE SIXTEENTH CENTURY.

§ 1. Temporal princes esteemed and Popes blamed for endeavouring to preserve ancient rights. § 2. Difficulties in times of transition. § 3. Bull against Henry VIII. of England. § 4. Against Henry IV. of France. § 5. Against Elizabeth of England. § 6. Charges against St. Pius V. § 7. Gunpowder Plot. § 8. Oath of allegiance. § 9. 'Claims of political power' by Paul V. § 10-12. Decision of Innocent X., 1648. § 13. Mediæval public law continued even after the introduction of Protestantism. § 14. Religious peace of Augsburg. § 15-17. Peace of Westphalia. § 18. The Jesuits and the edict of restitution. § 19. Paul V. and the Republic of Venice. § 20. Contests in the eighteenth century. § 21. Dissolution of the Jesuits. § 22. Spirit of the eighteenth and nineteenth centuries. § 23. Contests of the present day. § 24. Aspects of the future.

§ 1.

When a temporal monarch is tenacious of rights inherited from his ancestors, on any title whatsoever, even that of mere usurpation, conquest, and violence, far from being reviled he is esteemed for his firmness in maintaining the rights transmitted to him; while, on the other hand, he will meet with invariable censure should he through negligence, indolence, or cowardice suffer one of them to fall into disuse, or should he renounce any of them from scruple of conscience. Far different is the measure dealt out to the Pope. If he firmly maintains his rights, and refuses to suffer any diminution in the privileges of the Apostolic See, if he defends the rights exercised for many hundred years by his predecessors, whether founded upon the nature of the ecclesiastical primacy or on historical development, on solemn treaties or any other legitimate title, he is straightway accused of boundless ambition and pernicious sacerdotal arrogance, and every step taken by him towards this end is set down as an act

of pride and injustice; and yet he cannot transmit his throne either to his family or to his friends and favourites, and he, no less than the civil ruler, is solemnly bound by oath to defend his privileges to the utmost of his power; and to complete the injustice, those Popes who may in a moment of weakness have neglected to defend their possessions receive the same blame as civil rulers who have acted in a similar manner.

§ 2.

In times of transition, when the public law of the Middle Ages, though frequently broken through, was not as yet in principle abolished, the charges brought against the Popes, as may be seen especially in and since the time of Boniface VIII., were chiefly occasioned by their refusal to surrender at once the prerogatives of their predecessors, which up to that time had been universally acknowledged, and by their endeavour to maintain them against the attacks of individual countries and sovereigns. The Popes were blamed[1] when, instead of keeping to the strict letter of the law, they, according to the principle upon which Innocent III. laid such stress,[2] paid regard to considerations of equity, and to distinctions between persons, things, and circumstances, times and places.[3] Again, on the other hand, they were blamed when they did not suffer such considerations to prevail, but felt themselves bound to adhere to the letter of the law.[4] It was not possible for the Popes to satisfy censors who, as occasion suited, blamed both courses of action, and by whom even Christ Himself would not have been held blameless. The upholders of the modern State have been most severe towards the Popes of the sixteenth and seventeenth centuries, who were apparently under the delusion that what was possible and conceded to Innocent III. was likwise permitted to them.[5]

[1] L. viii. c. de Jud. iii. 1: 'In omnibus causis potior esse debet ratio aequitatis, quam stricti juris.' This aequitas is no mere subjective fairness, but the necessary regard to persons and circumstances partly ordered expressly by law (aequitas scripta), partly in virtue of the nature and final end of all law (c. ii. d. 4; c. xiii. de Off. Jud. Deleg. i. 29). Thus Schulte, K.R. i. 195, 398.

[2] Cf. Döllinger, Kirche und Kirchen, pp. 544 seq. 616 seq.

[1] Innoc. III. l. vii. Ep. 119, p. 405: 'Ad hoc Deus in Apostolica Sede constituit *plenitudinem ecclesiasticae potestatis*, ut diligenter inspectis variis circumstantiis personarum et rerum, temporum et locorum, nunc rigorem exerceat, nunc mansuetudinem anteponat, interdum exsequatur justitiam, interdum gratiam largiatur, prout in causis diversis diverso modo viderit dispensandum.' Cf. l. viii. Ep. 137, p. 715; l. xvi. Ep. 74, p. 875.

[2] Vide *e.g.* Alzog, Kirchengeschichte, ii. p. 58, 8th ed. on Boniface VIII. alone.

[3] Huber, p. 46 and elsewhere.

§ 3.

A series of Papal Bulls of the sixteenth and seventeenth centuries is often cited, in which, in accordance with the ancient principles of law, sanction is given to penalties against various heretical princes; notably the Bull against Henry VIII. of England, against Elizabeth, and against Henry IV. of France. Let us more closely consider each one of these cases.

Henry VIII. of England, during his shameful attempt to obtain a divorce from Queen Katharine in order to marry Anne Boleyn, broke completely with the Apostolic See, forced the English Church by violence into schism, and subjected to the bitterest persecution all true Catholics who refused to renounce the head of the universal Church. Paul III. after long delay issued the Bull dated August 30, 1535 (first published December 17, 1538), in which he called upon the king, already quite separated from the Church, to submit to the Holy See; and in the event of his persistence in schism declared his kingdom forfeited, and his subjects freed from their oath of allegiance.[1] In the matter of the excommunication the Pope could appeal to the power of binding and loosing given to him by God; but nowhere did he say that Henry's deposition followed directly in virtue of the divine law.[2] The feudal supremacy of the Roman See, so often acknowledged by the kings of England, gave a title by human law also, as being the public law of Christian States, at that time still in force. Henry VIII. himself still maintained the old laws against heresy and the whole mediæval principle of law,[3] with the single exception that he cast off the supremacy of the Pope, and in so far as concerned his own kingdom took the Papal office upon himself.

[1] Paul. III. Const. Ejus qui immobilis and Cum Redemptor, Bull. Rom. ed. Luxemb. 1742, i. pp. 707, 711 seq. Spondan. a. 1535, n. 15, a. 1538, n. 14.

[2] Gosselin, P. ii. c. iii. art. 1, § 2, p. 277, Germ. ed.

[3] Ranke, Englische Geschichte, i. p. 131.

§ 4.

It had ever been laid down by the public law of France that no heretic might possess the throne of the most Christian king. Accordingly Sixtus V., September 9, 1585, issued the Constitution 'Ab immensa aeterni Regis,'[1] intended, in the first place, publicly to denounce as heretics the two Princes Henry of Bourbon (King of Navarre) and Henry of Condé, who had relapsed into heresy. Thereupon, by the law then in force, followed loss of dignities and of the claim to the throne. In this Bull also the Pope appeals to the notorious character of the heresy, and to the forfeiture of the governing power and of dignity consequent upon it; he moreover makes a judicial declaration on the censures incurred by the two princes in the old accustomed form, and on the ground of the existing law. The same principles were defended by the parliament,[2] the Sorbonne,[3] and the citizens of Paris,[4] while the counter-declaration was signed by only seven prelates.[5]

[1] Spondan. a. 1585, n. 17. Sentis, Clem. VIII. Decret. liber septimus, l. v. tit. 5, c. xxvii. p. 165. Goldast. Monarch. S.R.J. t. iii. p. 124. Scripta utriusque partis, Francof. 1580, 8.

[2] Spondan. a. 1585, n. 7.

[3] Spondan. a. 1589, n. 111; 1590, n. 3, 9. Crétineau-Joly, Hist. de la Comp. de Jésus, t. ii. p. 411 seq. The decree was afterwards declared to be ungenuine, extorted, and null and void. Du Plessis, t. ii. P. i. pp. 482 seq. 530; P. ii. p. 295 seq.

[4] Ep. ad Sixt. V. ap. Anon. de justa Henrici III. abdicatione, l. iv. p. 392, ed. 1591. On the League, see Schneemann in the Laacher Monatschrift, 1872, No. 6, p. 504 seq.

[5] Spondan. a. 1591, n. 8. Bianchi, l.c. n. 4, 5, pp. 591-594.

§ 5.

The Bull of Pius V. also, 'Regnans in excelsis,' is a grievous stumbling-block to Herr Huber.[1] Elizabeth of England was not merely a Protestant, but was in addition a persecutor of

Catholics.[2] In the eyes of the whole Catholic world she was moreover completely illegitimate, being the daughter of Henry VIII. and Anne Boleyn, born during the lifetime of the rightful Queen Katharine. The only rightful queen, as they considered, was Mary Stuart, Queen of Scotland,[3] descended from Margaret, sister of Henry VIII., who married James IV. of Scotland. Hard pressed by her rebellious subjects, in 1568 Mary sought refuge with her cousin Elizabeth, who, instead of giving her a hospitable reception, subjected her to severe imprisonment, and finally to the ignominious death of the scaffold.

In the Bull above mentioned of February 25, 1570, the Pope declares Elizabeth, who formerly under Mary (1553-1558) had hypocritically professed the Catholic faith, and had afterwards thrown aside the mask, to be a heretic, and as such to have fallen under censures, and to be separated from the unity of the Body of Christ.[4] It was the universal conviction, not alone of the Catholics of England but of all the Catholic nations of Europe, that she had thereby forfeited all claim upon the English crown, and that her subjects were no longer bound by the oaths taken to her.[5] The Pope necessarily took for granted the continuance of the ancient law, which had not been altered even by Henry VIII.[6] Catholic jurisprudence was in complete accordance with the Bull, which in no way went beyond former Bulls on similar subjects, and in which the same formula was used.[7]

[1] P. 50. The Bull stands in the Bullar. Rom. t. iv. P. iii. p. 98. Cf. Sentis, l.c. c. xxiv. p. 165.

[2] Raynald. a. 1559, n. 1-10.

[3] Cf. Joh. Leslaeus (Ep. Rossensis), De titulo et jure serenissimae principis Mariae Scotorum reginae, quo regni Angliae successionem sibi juste vindicat, Rhemis, 1581. On the author, vide Theiner, Annal. ad a. 1574, n. 10, c. iv.

[4] *Declaramus* praedictam Elisabeth, haereticam et haereticorum fautricem, eique adhaerentes in praedictis anathematis sententiam *incurrisse esseque* a Christi corporis unitate praecisos.

[5] Gosselin, ii. pp. 280 seq. 346 seq.

[6] Many contemporary writers took the same view as the Pope. W. Allen, Ad persecutores Anglos pro Catholicis vera responsio, 1584, c. iv. v.; Exhortatio ad nobiles et populum Angliae, 1588; Dolemann, Conférence sur la Succession prochaine de la Couronne de l'Angleterre, 1593. (Persons) Elizabethae Angl. Reginae saevissimum in Catholicos sui regni

edictum cum responsione per D. Andr. Philop. Lugd. 1593: 'Hinc infert universa theologorum et jurisconsultorum schola, quemcumque principem Christianum, si a religione Catholica manifeste deflexerit et alios avocare voluerit, excidere *statim* omni potestate et dignitate *ex ipsa vi juris tum humani tum divini*, hocque *ante omnem sententiam* supremi pastoris ac judicis contra ipsum prolatam.'

[1] It is said to have been drawn up by Peretti, afterwards Sixtus V. Crétineau-Joly, Hist. de la Compagnie de Jésus, t. ii. p. 241, ed. 1844.

§ 6.

But this is not all. Pius V., says Huber, 'in his fanaticism did not shrink even from the crime of hiring assassins to murder the queen.'[1] This is indeed a fearful charge to bring against a noble-minded[2] Pontiff, revered by all Catholics as a saint! How is it proved? From a letter of the Pope to Philip II., in which he commends to him an Italian, Roberto Ridolfi, 'who will impart to him weighty matters concerning not a little the honour of God and the well-being of Christendom;'[3] whom, therefore, the king might trust, and supply with means for carrying out his designs. What these designs were the letter does not say, nor is there any proof that assassination was one of the 'weighty matters.' Neither do we know whether Ridolfi said precisely the same to the Pope and to the King of Spain; whether to the Pope he may not have made known his plan more in general, and to the king in detail; nor how far and to what deeds he had been authorised by the Pope. But why does our narrator pass over in silence the matter first treated of—the release from captivity of the unfortunate Mary Stuart, the really legitimate queen, in the eyes not only of the Catholics of England but also of many Protestants?[4] Why does he omit to mention that there was at that time a considerable Catholic party in England, who, in November 1569, had set on foot a rising in the northern counties, and desired to place the Duke of Norfolk at their head? This party became afterwards so important that, in spite of executions and banishments, London still numbered 40,000 Catholics at Elizabeth's death.[5] Why does he conceal that in the life-and-death struggle between the two religions a rising of the English Catholics, aided by Spain,

against Elizabeth's heavy yoke was, to say the very least, as justifiable as the rising of the Netherlands against the Spanish throne, which was continually supported by England, and was to Philip cause sufficient for a war against Elizabeth? Had not the Catholics of England at least as good cause for attempting rebellion against Elizabeth, by whose tyranny their most sacred interests were violated, as the Greeks for rising against the Turks, and the Poles against Russia?[6]

Roberto Ridolfi of Florence, who lived in England, was commissioned by the captive Mary Queen of Scots in 1571 to obtain her freedom from the Pope and the King of Spain.[7] Pius V., who had her freedom much at heart, was deeply interested in the envoy, who seemed, moreover, well acquainted with the state of things in England; the Pope gave him a letter to King Philip, in which he expressed the interest he felt;[8] he also earnestly commended the release of the Queen of Scots to the Catholic king through his nuncio the Archbishop of Rossano. But when and where did the Pope hire an assassin? Leaving out of the question the fact that Ridolfi's design of assassination has never been proved, there is not the smallest proof that the Pope, who was so deeply concerned for the Queen of Scots, in any way even favoured, far less instigated, such a plan, or that he desired means to be employed so wholly unsuited to the noble end of the release of the unhappy queen.[9] It is fortunate that the accusers of St. Pius are not judges in a criminal court; for by their mode of procedure, and with their idea of judicial proof, there would every day be imminent danger of judicial murder.

[1] Huber, p. 50. Also Döllinger, in the statement of March 13, 1872.

[2] Gachard, Correspondance de Philippe II. t. ii. p. lvi. seq., gives many evidences of the sanctity of Pius V. Cf. also Ranke, Hist. of Popes, i. 350-354; iii. 307-309 (Germ. ed.); and Falloux, Hist. de St. Pie V. Paris, 1843.

[3] Huber, p. 51.

[4] Ranke, Englische Gesch. Berlin, 1859, vol. i. p. 376.

[5] Ib. pp. 372, 375, 501.

[6] It is remarkable how severely the rising of Catholic nations in favour of their legitimate rulers has been condemned by the liberal enemies of the Church, who extolled the attempt made against Ferdinand II. of

Naples, the Duke of Parma and others, and the dethroning of the Italian princes since 1859; and who have ever sought to justify the revolutionary unification of Italy. The Spanish rising of 1868 against Isabella was justified by them, and they even placed a son of Victor Emmanuel on the throne of St. Ferdinand; but Carlist risings are in their eyes merely wicked rebellions.

[7] Gachard, Correspondance de Philippe II. t. ii. 180 seq.

[8] Mignet, Hist. de Marie Stuart, t. ii. App. p. 423.

[9] Vide Germ. ed. of F. A. Mignet's Hist. of Mary Stuart, Leipzig, 1851, c. ii. pp. 279-291.

§ 7.

The increasing persecution of Catholics in England under King James led in November 1605[1] to the notorious Gunpowder Plot, and upon its failure all Catholics, even those who had no share in it, suffered grievously for the guilt of a few. Father Garnet's trial[2] was evidently conducted so as to prove, cost what it might, the guilt of the Catholic priesthood, and in particular of the Jesuits. In his examination contradictory statements were recorded which he did not acknowledge as his own; the rack was freely employed to force the desired confession from him and from the other accused; no heed was paid to the binding nature of the seal of confession for a Catholic priest, nor to the self-possessed and conscientious behaviour of Father Garnet in his most difficult position.[3] Had other persons instead of Jesuits been concerned, this trial would have received a far different colouring from that in which men now endeavour to represent it. Jesuitical plots at that time, and long after, played a great part in England,[4] even when they were such arrant fabrications as the Titus Oates plot in 1678.[5] What effectual measures the Jesuits could have taken to hinder the Gunpowder Plot without breaking the seal of confession, which is binding on a Catholic priest under all circumstances, has as yet never been made known.

[1] The Calvinists of Antwerp had set the example by their attempt on the Duke of Parma. Crétineau-Joly, Hist. de la Comp. de Jésus, t. iii. c. ii. p. 78 seq.

[2] Huber, pp. 57-59. Cf. Döllinger, A. Z. March 15, 1872.

[3] Lingard's History of England, ix. p. 59 seq. Riffel, Die Aufhebung des Jesuitenordens, 2d ed. pp. 306-311, note. The condition of Catholics

under James I., Father Gerard's Narrative of the Gunpowder Plot, by John Morris, S.J., London, 1871. It appears from the documents made known by Crétineau-Joly, t. iii. p. 83 seq., that the conspirators most feared hindrances on the part of the Jesuits, and also the death of innocent Catholics, which could not be avoided if the catastrophe occurred; that they put their questions figuratively and ambiguously before Fr. Garnet; that even before the end of the trial the report was spread on the Continent that Fr. Garnet was the chief instigator of the plot, and the endeavour was being made to throw the blame altogether upon the Jesuits.

[4] As early as the reign of Elizabeth many spies were kept, who searched the houses of Jesuits, even on the Continent, to find out pretended plots. De Thou, Hist. l. viii. a. 1580, p. 541 (French trans.).

[5] Ranke, Engl. Gesch. vol. v. 1865, p. 76 seq. Nota in Defens. Cleri Gallic. l. iv. c. xxiii. p. 388.

§ 8.

The oath of allegiance imposed by parliament upon English Catholics in consequence of the Gunpowder Plot[1] was in spirit precisely analogous to the oath of supremacy. Besides designating the king as the highest ruler, which implied in this context that the Pope was a subordinate authority, Catholics taking this oath were forced expressly to acknowledge in words that the said oath, which treated of questions of faith, was demanded of them lawfully by a legitimate and plenary authority. This was nothing less than to acknowledge in a temporal prince authority to decide and guide the faithful in matters of faith.[2] Moreover, it is hurtful to faith and the welfare of souls to anticipate the judgment of the Church, and to condemn as impious and heretical an opinion which the Church has not thought good to condemn, which many pious and learned men hold in all good faith, and which has had many most distinguished defenders in the schools of theology. English Catholics in taking the oath of allegiance were guilty of sin; because in the oath the doctrine that the Church, in certain cases, especially for apostasy and heresy, can declare sovereigns to be deposed and their rights forfeited, was condemned as impious and heretical, and thus the Church was made guilty of tolerating heresy, and her very essence was attacked. The Catholics of England, like those of France at a later time, might indeed hold this doctrine to be doubtful, not in accordance with revelation, and even to be

false;[3] but to condemn it as *impious* and *heretical* without awaiting the judgment of the Church was a grievous wrong, violating Christian love and every principle of the Church, and appears even to Bossuet to be exaggerated and rash.[4] The oath moreover attributed to the Roman Church, only in order to make her hated, the doctrine that any private person might put to death at will an excommunicated prince,[5] a doctrine which was at that time rejected and stigmatised by almost all theologians. Impartial Protestant historians have fully acknowledged that the Apostolic See had good ground for rejecting the form of the oath. Thus Ranke says (will he next be called a Jesuit in disguise?) that had this oath been accepted the supremacy of the king would have been in fact acknowledged, and the adherence of the English Catholics to the Papacy would have come to an end.[6]

[1] Huber, p. 60.

[2] Gosselin, ii. pp. 282-286.

[3] Cardinal Barberini, in reply to a Scotchman, is said to have declared: '*Francis* morem non esse, ut in hujusmodi quaestionibus *Romanos* consulant; consultos vero *ab Anglis* hoc sine dubio resoluturos quod juri suo magis congrueret, interim vero theologis *Britannis* fas esse sicut et *Francis*, ut jus suum persequantur' (Remonstrantia Hibernorum a R. P. Caron, P. i. c. iv. § 4, p. 8, ad Calcem. t. ii.; Tractatuum des droits et libertés de l'Eglise Gallicane, t. ii. ed. 1731). The note to Bossuet, l. iv. c. xxiii. p. 389, adds: 'Optime Barberinus et candide.'

[4] Defens. Decl. Cleri Gall. P. i. l. iv. c. xxiii. p. 387: 'Et quidem ab ea sententia abhorrere, prospectis melius rebus, uti nos Franci facimus, erat licitum ac bonum; damnare ut haereticam, absque Ecclesiae auctoritate, *nimium et temerarium* videbatur.'

[5] The words are: 'Je jure encore que j'abhorre de tout mon coeur comme *impie et hérétique* cette *damnable* doctrine et assertion, que les princes excommuniéz ou privéz de leurs états par le Pape peuvent être déposéz *ou tuéz* par leurs sujets, ou par quelque autre personne que ce soit' (Rapin Thoyras, Histoire de l'Angleterre, t. vii. l. xviii. a. 1606).

[6] Ranke, Engl. Geschichte, vol. i. pp. 544, 545.

§ 9.

Paul V. is charged with having sacrificed the reunion of England with Rome to his own ambition for political power, and reference is made to a diplomatic document of 22d July 1609 in the National Library in Paris. But is the charge proved?

The document does not treat of claims to political power, but of the setting aside of ecclesiastical rules in order to stigmatise a doctrinal opinion held in high esteem in the Church, and perhaps shared by the Pope himself. The French ambassador in Rome, M. de Brèves, announced that James had desired to recognise the Pope as the first Bishop and Head of the Church, if only he would renounce the pretension that Popes have authority to depose kings; and that the Pope had declared himself unable to do so 'sans être taché d'hérésie.'[1] It may still be doubted whether the French diplomatist had got hold of the Pope's exact words; for diplomatists seldom enter into theological distinctions, and even at the present time in such circles the Syllabus of 1864 is spoken of as though all the propositions condemned therein *in globo* were to be considered as so many heresies. There was no formal declaration drawn up on the part of Paul V. Whoever defends an opinion approximate to heresy may be said to be 'stained by heresy,' and theologians of that day set down the denial of the indirect power as *proxima haeresi*. In any case, it went against the conscience of the Pope to suffer the condemnation of an opinion defended by the most renowned theologians and truest adherents of the Holy See, knowing the injurious consequences which would ensue from such a sentence; even had he not personally shared this opinion, he could not at that time have left it exposed to its enemies. This is shown by a glance at the theological literature of that day. Any one too who is acquainted with the condition of England under James I. must be aware that the king, even had he desired it, could never have brought about a reunion with Rome; the recognition of the Pope as first Bishop and Head of the Church[2] would have been altogether illusory, and somewhat like the later idea of Charles II., who desired a reunion with Rome, but without a complete restoration of the Pope's authority, and retaining as much independence as possible for his Anglican Church.[3] James I. was still further from the Roman See, and held to the maxim uttered on his accession to the throne: 'I make law and gospel as pleases me.'[4] Rome may have been unwilling openly to call in question either James's good intentions or the suffici-

ency of his power; still there was good reason to doubt of both. But while James was dealing as severely as ever with Catholics, and was himself taking up the pen against their Church, Henry IV. of France was doing his best to mediate between him and the Pope, and in this matter De Brèves spared himself no pains. As to the words—'This pretended right of deposing kings was in the eyes of the Pope an article of faith,' &c.—they are not the words of De Brèves,[5] but of G. H. Gaillard, who gives his own account of the doings of De Brèves.

[1] Notices et Extraits, t. vii. p. 311. Döllinger, in the statement of March 13, 1872, already cited, puts forward the declaration of the Pope.
[2] Not as 'Lord of the Church,' as Huber says, p. 62.
[3] Ranke, Engl. Geschichte, vol. iv. p. 241 seq.
[4] Hist. Essays, by John Forster, London, 1858, i. 227.
[5] As is falsely said by Huber, p. 63.

§ 10.

A decision of Innocent X. in 1648, containing a fresh condemnation of this oath, is said to have been called forth by the Jesuits;[1] and yet it is precisely the Jesuits in England, many of whom with heroic courage suffered, like the early Christians, a martyr's death, who were defenders of the most indulgent principles. They it was who induced Gregory XIII. to supersede his predecessor's severe sentence against Elizabeth, and to declare obedience to her as a temporal sovereign to be lawful.[2] Facts and documents plainly show that they used their influence against revolt and violence,[3] of which they were incessantly accused, although perfect freedom might have been theirs had they consented to give up their faith.[4]

[1] Huber, p. 64.
[2] Camden. Annal. Regni Elisab. a. 1580. Crétineau-Joly, Hist. de la Comp. de Jésus, t. ii. c. v. pp. 257, 266.
[3] Hollingshead and Camden allow this of the time of Elizabeth. Crétineau-Joly, l.c. p. 301.
[4] Crétineau-Joly, l.c. pp. 297, 298.

§ 11.

The decision projected in the Congregation of 1648 was

never published either in Rome or in England. It is said to have declared that the Catholics of England were not at liberty to relinquish and condemn the following propositions: (*a*) The Pope can release any man from obedience to the existing government; (*b*) he can release from an oath taken to a heretic; (*c*) persons condemned by the Pope as heretics may, at his command or with his dispensation, be put to death or misused.[1] We have not the text of the decision in question.[2] It is certain the power of loosing from oaths cannot simply be denied to the Pope, whether they be taken to a Catholic or to a non-Catholic. Only in so far as the rejection of the three propositions involved a rejection of the rights of the Pope, by anticipating the decision of the Church and arbitrarily settling the controversies of the day, was it criminal and worthy of condemnation.[3]

[1] Al. Zeitung, June 19, 1870, A. Sup. No. 31. Huber, p. 64.

[2] Huber refers to no original; the copy of the Al. Zeitung, after quoting the condemnation of the oath of allegiance by Paul V., gives the reference: Dodd, Church History of England, iii. 288; Tractatus Dogmat. et Schol. de Ecclesia, Romae, 1782, ii. 245. This last I have not seen. In the passage mentioned in Ch. Dodd (died 1745), who carried his work up to the year 1688, nothing relating to this matter is to be found, not at least in the edition brought out by Timey, 1784. On the other hand, three propositions are quoted by Caron (Remonst. Hibernorum, P. i. c. iv. § 3, p. 7), which are but slightly different from those given above: (1) 'Pontificem Romanum posse subditos regni Catholicos ab obedientia et fidelitate civili principum ac magistratuum Protestantium eximere;' (2) 'Posse eosdem principes seu magistratus tamquam excommunicatos deponere vel occidere;' (3) 'Posse in juramentis ac contractibus Catholicorum quibuscunque cum Protestantibus dispensare.'

[3] This is proved by the words: '(S. Congregatio) subscriptores (earum damnatarum propositionum) in poenas in sacris canonibus et constitutionibus apostolicis contra negantes potestatem Pontificiam in causis fidei incidisse declarat.'

§ 12.

When we learn that, in spite of the Papal decision, nine-and-fifty doctors of the Sorbonne[1] declared 'that the oath of allegiance might be taken with perfect security to a religious conscience,'[2] we must remember this was in exact accordance with the position adopted by this body, since 1663 more openly

than ever before, towards the teaching of the Roman theologians, especially on the indirect power of the Church.[3] Other Theological Faculties, as, for instance, that of Lyons, did not agree in the vote passed by Paris.[4] The defenders of the 'Irish Remonstrance,' which was censured at Rome in 1662, pleaded in its favour that in it those propositions had been omitted which might have been found offensive in the oath of allegiance.[5] The Remonstrance contained eight articles, all designated as 'dogmas of religion,' though those signing it had no right to call them dogmas; the mere slight mention of 'dependence on the Roman See,' the really insulting form of many of the articles towards the Holy See, the close analogy both in words and sense with the earlier oath of allegiance, the violent opposition to doctrines not yet condemned by the Church, necessarily gave the document a character dangerous to faith. It was a somewhat modified—in indifferent matters an extended—paraphrase of the oath of allegiance. The increasing persecution of Catholics and the establishment of the Test-Oath in 1673,[6] by which even the denial of the dogma of Transubstantiation and the recognition of the king's ecclesiastical supremacy were required, showed plainly that declarations such as the Remonstrance availed nothing to those signing them, in spite of the sympathy of the king, in heart a Catholic.[7] A long list of penal laws against Catholics as such, with no mitigation towards those who adhered to Gallican doctrines, followed under William III., Anne, and George I.,[8] though no other dangerous conspiracies were alleged. It is acknowledged even by Protestants that Innocent XI. sought the restoration of the Catholic religion in England by evangelical means alone.[9]

[1] Du Plessis d'Argentré, Collect. Judic. t. iii. Paris, 1736, P. i. p. 139. Censures et Conclusions de la Faculté de Théologie de Paris touchant la souveraineté des Rois, Paris, 1720, iv. p. 393. Bossuet (l. iv. c. xxiii. p. 384) says that the judgment was put on the Index at Rome in 1683, which is however disputed by others.

[2] Huber, p. 62. The document says: 'Salva fide et tuta conscientia,' but still with the restriction 'si modo in propositione, quae est de depositione et caede principum, ut quae damnatur ut *haeretica*, deponi et occidi *conjunctim* accipiantur, imo etsi *divisim*, ita ut tamen propositio haeretica materialiter, id est verbo Dei contraria finiatur quatenus deponi

posse principes effert, formaliter vero etiam, quatenus et *occidi* posse superaddit.' (Du Plessis, l.c.)

[3] Bianchi, t. i. l. i. § 13, p. 113 seq.

[4] Cf. Bossuet, l.c. p. 387; Gosselin, ii. p. 287, note.

[5] Caron (l.c. c. iv. § 2, p. 6) points out the following distinctions between James' formula and that chosen in the Remonstrance: '(1) Quod (formula Jacobi) non tantum *agnoscat*, ut nostra, sed et *juret* Deumque in testem adducat, ea sic esse, prout exponit. . . . (2) Quod illa declaratio Jacobina *tamquam impiam haereticam et damnabilem* damnet opinionem oppositam, quam Pontificiam vel Bellarminianam appellant. (3) Quod illa *credat* Pontificem non posse in illo juramento vel ulla illius parte dispensare. *Quae omnia in nostra omittuntur.* . . . Et nunc ex Em. D.D. Cardinalibus ultramontanisque theologis quaero: Si in Remonstrantia illa Jacobina multa contineantur per nos in nostra *omissa*, quomodo verum erit, quod illi asserunt, Remonstrantiam nostram cum illa a Paulo V. damnata convenire aut instar repullulantis hydrae continere propositiones convenientes cum aliis a Sede Apostolica olim reprobatis?'

[6] Cf. Ranke, Englische Geschichte, iv. pp. 422-424.

[7] Ranke, ib. p. 363 seq.

[8] Rintel, l.c. pp. 40, 41.

[9] Ranke, l.c. v. p. 482.

§ 13.

Until long after the so-called 'Reformation' the ancient principles of legislation were still maintained in the States of Europe; and it is only by degrees, and by no means at the same time in all countries, that these have undergone any complete change. Almost everywhere there was a State religion in close union with the civil power. As in countries purely Catholic a ruler was strictly required to be of the Catholic faith, which was constitutionally established,[1] so afterwards in Protestant States the Catholic faith was proscribed, and sovereigns were required to be of the dominant religion. An act of the English parliament of 1688, renewed in 1701, excluded all Catholics and their wives from the throne;[2] and again in 1805 parliament enacted that an English king becoming a Catholic should at once forfeit the crown.[3] In Sweden, where the most severe laws were passed against the Catholic religion,[4] King Sigismund, for being a Catholic, was dethroned in 1604 by Charles IX. In 1720 this rule was actively enforced,[5] and the constitution of 1809 required the king and all State officials to profess Lutheranism;[6] the same public law was established by the constitution of Norway in 1814,[7] and this was also done in-

Denmark and many German States. The Greek Church was in like manner maintained in Russia; and even to this day princesses coming into the country by marriage are required to enter the Greek Church.

[1] Cf. the stipulations of Philip II., May 6, 1598, on ceding Belgium to his daughter Isabella and her future husband Albrecht of Austria (J. Dumont, Corps Dipl. Univ. v. i. p. 574; Spondan. a. 1598, n. 15; Synopsis Monum. Eccl. Mechlin. t. iii. p. 1041); the Spanish constitution of 1808 (Dufau et Guadet, Collection des Constitutions, t. v. pp. 65, 86); that of Sicily (ib. iv. p. 464); that of Poland, 1697 and 1768 (l.c. 34, 35, Mémoires pour servir à l'Hist. ecclés. du 18 siècle, t. i. Introd. p. clx.; Lenglet-Dufresnoy, Méthode pour étudier l'Histoire, t. viii. p. 346); that of France, 1685 (Dufau et Guadet, t. i. p. 79).

[2] Dufau et Guadet, l.c. t. i. pp. 387 seq. 396.

[3] Parliamentary Debates, t. iv. Lond. 1805, p. 677. Cf. De Maistre, Du Pape, t. ii. concl. p. 251.

[4] Even the Edict of Gustavus III. of Jan. 24, 1781 (Theiner, Sammlung einiger Aktenstücke z. Gesch. der Emancipation der Kath. in Engl. Mainz, 1835, p. 77 seq.), shows extreme severity.

[5] Lenglet-Dufresnoy, l.c. pp. 220, 237, 260. Moréri, Diction. v. Suède et Sigismonde III., Ulrique, Eléonore, Frédéric de Hesse-Cassel.

[6] Dufau, l.c. t. iii. p. 306.

[7] Ib. t. iii. p. 322.

§ 14.

In Germany, at the opening of the sixteenth century, the relations of Church and State were, in their principles and chief characteristics, still thoroughly mediæval;[1] the temporal sword was to aid the spiritual, especially against heresy. The extermination of Protestantism was held to be a duty not by Popes Leo X., Hadrian VI., and Clement VII. alone,[2] but by all the Catholic princes, theologians, and jurists of Germany, in particular by Charles V. and many of his counsellors,[3] and by the Dukes of Bavaria;[4] negotiations or peace with sectaries, by which the rights of the Church were given up, were strongly reprobated.[5] Charles V. opposed with heart and soul the religious peace of Augsburg in 1555,[6] and before that the treaty of Passau in 1552, which wrought so great a change in Germany; but he was aware that his crippled power was insufficient to punish the wrongs done to himself and to the empire.

Paul IV. in protesting against the religious peace, regarding it as null, and being prepared to release any oath taken to

maintain it,[7] was expressing his own view of law, and his firm conviction that as yet no necessity had arisen for any such departure from the universal principles of law held both by himself and by the emperor; and there is therefore no ground[8] for concluding it to have been a matter of indifference to him that Germany was once more plunged into civil war and made the prey of foreign lands. But setting entirely aside the fact that numerous disputes arose over the interpretation of the Augsburg religious peace,[9] and that Germany lost blessings greater than that of peace by the disunion of faith being completed, was the treaty such as really to secure peace?[10] and was it found capable of hindering incessant local battles, and at last the Thirty Years' War? Was it not rather itself the cause of that war?[11]

[1] Warnkönig, Die Staatsrechtl. stellung der Kath. Kirche in den Kath. ländern des deutschen Reichs, Erlangen, 1855, p. 12.

[2] Huber, p. 40. Vide Letters from Campeggio to Clement VII. Nov. 13, 1530, and June 24, 1531; from Salviato to Campeggio, July 13, 1531 (Lämmer, Monum. Vaticana, pp. 64 seq. 73, 74). Campeggio's Memorial of May 1530, in Maurenbrecher's Charles V. and the German Protestants, Dusseldorf, 1865, Appendix, i. iii. p. 3 seq. Ranke, Popes, i. p. 111 seq. Germ. ed.

[3] Letter to Clem. VII. Dec. 22, 1523. Lanz, i. 80. Maurenbrecher, l.c. pp. 12, 25, 60, 344, Appendix, i. iii. p. 16 seq.

[4] The Bishop of Modena to Farnese, March 1541. Lämmer, l.c. p. 367; Maurenbrecher, p. 51.

[5] Thus earlier Ferdinand and the Prince-Elector Joachim of Brandenburg. Seckendorf, Comment. Hist. Apol. de Luther, iii. 27. For Bavaria, vide Pallavicini, Hist. Conc. Trid. l. iii. c. ix. n. 7; for Otto of Augsburg, Buchholtz, vii. 178 seq.

[6] Maurenbrecher, l.c. pp. 308, 309, 311.

[7] Bzovius, Annal. Baron. Cont. t. xx. p. 306, ad a. 1555, n. 36, without reference to sources. Cf. Fessler, Die wahre und die falsche Unfehlbarkeit, p. 65.

[8] Schulte, i. p. 51, note 2, and No. 44.

[9] Cf. Phillips, Kirchenrecht, iii. § 140, p. 442 seq.

[10] Schenkl, Syntagma Jur. Eccl. Salisb. 1786, § 184, p. 102.

[11] Onno Klopp (Kleindeutsche Geschichtsbaumeister, p. 131) calls the Augsburg religious peace the fruit of the treachery of the Prince-Elector Maurice, the seed which after long preparation grew up into the Thirty Years' War.

§ 15.

The protest of the Pope against the peace of Westphalia, by which the Thirty Years' War was brought to a close, has given even greater offence. When the Bull of Innocent X. is justified as a protest against the immoral principle 'Cujus regio, illius religio' (He who rules the land settles its religion), it is objected that no such protest is to be found in the Bull.[1] It is true that no express condemnation of the principle appears in the Bull, but neither is it explicitly put forward in the treaty of peace; but like the religious peace of Augsburg, of which it was professedly the development, the whole treaty of Westphalia is based upon this principle.

The Pope's protest does not extend to the peace as such, nor to all parts of the treaty, but only to certain articles by which injury was done to the Church.[2] Moreover, he does not speak as 'sovereign of sovereigns,'[3] but only as supreme Head of the Church, whose duty it is to guard the faith and the rights of the Church. The Pope lays especial stress on the following seven points in the treaty: (1) The Church property occupied by heretics was made over to them and theirs for ever.[4] (2) The heretics of the so-called Augsburg Confession were permitted the free exercise of their heresy in numerous places;[5] assignments of sites were promised for the building of suitable meeting-houses;[6] and they, together with Catholics, were admitted to public posts and offices, to certain archbishoprics and other ecclesiastical dignities and benefices;[7] also to a share in the privilege of the 'first petition' (jus primarum precum) granted by the Apostolic See to King Ferdinand on his election as emperor.[8] (3) Annates, or firstfruits, the right of bestowing the pallium,[9] confirmations, Papal months, and similar rights and reservations were removed from the Church goods of the said Augsburg Confession. (4) The confirmation of the election or postulation of the pretended archbishops, bishops, or prelates of the said Confession was given over to the civil

and properties—being no longer even called Church property—were given to heretical princes and their heirs, as perpetual fiefs, under the title of a civil dignity. (6) There was a special provision that no law, canon or civil, universal or peculiar, no decree of a Council, rule of an order, oath, Concordat with Popes, or any other civil or ecclesiastical decree, dispensation, absolution, or other exemption, should be appealed to, listened to, or admitted in contradiction to any single article of this peace.[11] (7) The number of the prince-electors, which had been once settled by apostolic authority,[12] was, without the consent of the Pope and that of the Apostolic See, increased, and an eighth elector appointed in favour of the heretical Count Palatine Karl Ludwig and others, to the serious injury of the orthodox religion, the Holy See, the Roman Church, and other Churches dependent upon her.[13]

The Pope had without doubt the right of protesting, since his own rights were wholly disregarded, Concordats strictly observed by Rome were violated, and the rights of all Catholics grievously injured. He could not have remained silent even had he foreseen that his remonstrance would be in vain;[14] had he held his peace his tacit consent might have been inferred.[15]

[1] Huber, p. 66 seq.

[2] Fessler, Die wahre und die falsche Unfehlbarkeit, p. 56, note **.

[3] The 'apostolical supremacy' to which Schulte (vol. i. p. 41, § 30) refers applies solely to the domain of the Church.

[4] No less 'stress' is laid on this provision, which is passed over by Herr Huber, than upon that which follows, which he puts foremost. Both by spiritual and by civil law, Church property could not be disposed of without the authority of the Church, especially to her injury, and an alienation of this sort was a grievous violation of law.

[5] Huber (p. 67) speaks of perfect religious freedom, and the social equality of the Protestants with the Catholics; but perfect religious freedom was far from being given.

[6] Coöperation in the spread of heresy was at all times subject to ecclesiastical penalties.

[7] Nothing could be more absurd or more wounding to Catholics than the Protestant bishops, who held these offices merely for the sake of the temporalities, especially the alternate succession of Catholic and Protestant bishops in Osnabrück.

[8] Cf. J. A. Brand, diss. de Jur. Caesar. primar. precum, et Endres, diss. de Insinuationis primarum precum necessitate, in Thesaur. Jur. Eccles. t. v. n. 4, t. vii. n. 9, Lunig.; Spicil. Eccl. i. c. i. § 170 seq.; Friedberg, l.c.

pp. 180-188. Clement XI. still defended the Papal right in the Brief to the Chapter of Hildesheim, 1705, and in the Indult, Cum post factum, March 10, 1714.

[9] 'Jura Palatii' in the Bullarium is a misprint; as appears from the decree in question, Instrum. Pac. Osnabr. art. 5, § 19.

[10] Instr. Pac. Osnabr. art. 5, § 21.

[11] I. P. Osn. art. 17, § 3; Monast. c. xvi. § 113. By this clause the legislation and indeed all the rights of the Church and of ecclesiastics, especially of the Pope, were seriously and harmfully interfered with.

[12] This statement gives special offence to Huber, p. 68. But might not Innocent X. maintain what had been said more than three centuries before by the German King Albrecht in his document of July 17, 1303? Hefele (Conc. vi. p. 289, note 2) supposes Albrecht to have declared this earlier than the Popes. The tradition mentioned by the author of the work De Regimine Principum, iii. 10, that Gregory V. appointed the Electors, was received not alone by Hadrian VI. (Ep. ad Frideric. Saxon. 1522, Hard. ix. 1901), but also even by the Magdeburg Centuriators (Centur. x. c. xix). Friedberg (Diss. cit. p. 25, note 5) records many authors by whom the tradition is mentioned.

[13] Ceteraque in dictis instrumentis contenta, quae Cath. religioni, divino cultui, animarum saluti, eidem Sedi Ap. Romanae et inferioribus ecclesiis . . . quomodolibet . . . praejudicium . . . afferunt.

[14] Walter, Kirchenrecht, § 113, note 2. Phillips, Kirchenrecht, iii. § 141, p. 476. Fessler, l.c. pp. 56, 57.

[15] Schenkl, Synt. Jur. Eccl. § 187, p. 105. The subject is treated well and in detail by Schmidt, Instit. Jur. Eccles. German. P. i. pp. 83-93.

§ 16.

The canonical, and in general the juridical, point of view is carefully to be distinguished from the political.[1] Looked at from the first, not the Pope alone but every Catholic had to pass judgment on the peace, as was acknowledged on almost all sides.[2] On political grounds only could it be defended. Rome accepted it as a momentous deed done, not as a just deed; for injustice can never become justice, least of all when the Church is concerned. Apostasy from the one Church was indeed a violation of law, from which innumerable others ensued; in so far, however, as the treaty, at least outwardly, restored peace and order to Germany it was beneficial, though scarcely in any other respect, for at the present day it is still a question with politicians whether this peace of Westphalia, in which the superior power and arrogance of France and Sweden dictated laws to the worn-out German Empire,[3] was so great a blessing.[4]

Few acquainted with history would venture to reply to this question with an unconditional affirmative. Still less can it be considered as a blessing that, as has been most truly said by Döllinger,[5] it set a seal to the system of making sovereign princes the rulers over religion and conscience.

[1] Walter, l.c.

[2] Warnkönig, l.c. p. 21: 'From the Catholic point of view the peace of Westphalia was indeed an act to be condemned in the Catholic princes of Germany, and necessarily drew an earnest protest from the Pope.' Martin Gerbert (op. cit. l. iii. c. viii. n. 13 seq. p. 566 seq.), in recording the provisions of the peace of Westphalia, and in stating the grounds for and against, makes his judgment plainly known, even though he does not venture to express it in words, having regard to I. P. Osn. a. 5, § 50; a. 17, § 2, 3.

[3] Onno Klopp, Kleindeutsche Geschichtsbaumeister, Freib. 1863, p. 3 seq.: 'The treaties of 1648 were the work of foreigners, of France and Sweden. They are not, as is well known, a development of our national life, but are to be considered as a maiming of it, and, moreover, a maiming by a foreign power.'

[4] Cf. Ludwig Bamberger (Gedanken zur Völkerpsychologie, ii. Allgemeine Zeitung, Sup. Jan. 24, 1871), in the sketch of the speech made by Thiers, March 14, 1867, in which he lauded the peace of Westphalia as the happy cause of the peace of Europe up to 1866, and amongst other things said: 'Upon it (this great treaty) are founded the freedom of Europe, the independence of the smaller States of Germany, the glory of France; thanks to this peace Europe has been set free, set free by France, and France itself is covered with glory.'

[5] Kirche und Kirchen, p. 58.

§ 17.

The numerous misinterpretations to which the Bull of Innocent X. had been exposed became known in Rome, and although the conduct of the Holy See for 160 years might have completely put an end to the uneasiness of princes, still the Pope gave a direct explanation. In the protest presented to the Congress of Vienna by Cardinal Consalvi[1] and confirmed by Pius VII. in a Consistory,[2] against all things done or not amended, to the injury of the Church in Germany, and against all things prejudicial to the salvation of souls resulting therefrom, the following statement was expressly made: That the Holy Father, in virtue of the charge of the flock of Christ laid upon him, and in virtue of the sacred oaths by which he was bound, could not keep silence amid so many violations of the

rights of the Church,[3] lest it should appear as though he, by his forbearance, approved thereof; and also because, according to the example given by his predecessors, who had not failed frequently to raise their apostolic voice when the Church suffered injuries even far less serious, he was bound, so far as lay in his power, to maintain the interests and rights of the Church.[4] Amongst the examples of former Popes the accompanying note of Cardinal Consalvi cited the following: (1) that of Innocent X. in relation to the peace of Westphalia;[5] (2) that of Clement XI. in 1707 and 1714;[6] (3) that of Benedict XIV. in 1744.[7] This very comparison proves that the Bull of Innocent X. was understood only in the sense of an earnest protest. Still Herr Huber[8] cannot refrain from saying, 'The protestation of Cardinal Consalvi against the result of the Vienna Congress of June 14, 1814, is further proof that the rejection of the peace of Westphalia is insisted upon by Rome. Indeed since the time of Henry IV. it has been a tradition of Papal politics to raise civil war in Germany, and thus render the empire powerless.' Any person acquainted with the untold misery of the Catholic Church in Germany since the secularisation, and the state of things then introduced, is well able to estimate how idle it is thus to speak of so just a defence of rights.

[1] Bullar. Rom. Contin. t. xiii. pp. 403-407 (Italian). Klüber, Acten des Wiener Congresses, Erlangen, 1838, vol. vi. p. 442. Roscovány, Monum. Cath. t. ii. pp. 96-99, n. 297. Also in French in the Monde, 3 Dec. 1863, n. 168, though not in full.

[2] Allocution of Sept. 4, 1815, Bull. Rom. Cont. l.c. p. 398.

[3] In the note accompanying the protest are the words: 'Il Santo Padre, responsabile a Dio, alla Chiesa ed ai fideli non potrebbe senza mancar ai suoi doveri, osservar il silenzio intorno a risoluzioni di questa sorta.'

[4] In the protest itself: 'Non solo non li può passare sotto silenzio, affinchè non sembri col tolerarli che Egli li approvi, ma sull' esempio ancora de suoi predecessori che contro pregiudizii di minore importanza fatti alla Chiesa non omisero di far sentire la loro apostolica voce, è costretto a difendere ed a conservare intatti *per quanto esso può* i diritti e le ragioni della Chiesa.'

[5] The protest itself mentions only the protest made at Münster by the Bishop of Nardo, Fabio Chigi, as a precedent for such a declaration on the part of the Papal legate; and the Papal Allocution, § 8, simply says:

[4] Haec ab eo, qui nostram gerebat personam, agenda erant omnino, ut jura Ecclesiae ponerentur in tuto.'

[5] Supplem. ad Natal. Alex. H. E. t. ii. pp. 194, 308. Schröckh, Kirchengeschichte seit der Reform. vi. p. 388.

[6] It appears that the protest against the treaty of Worms, Sept. 13, 1743, is meant. Cf. Gfrörer, Geschichte des 18 Jahrh. herausgegeben von Weiss, vol. iii. p. 228 seq.; Carutti, Carlo Emanuele III. vol. i. c. ix. pp. 237, 238.

[7] Huber, p. 68.

§ 18.

To furnish grounds for the complaints against the protest of Innocent X. history has been ransacked, and an attempt made to get together a list of accusations. Rome and the Jesuits have been charged with stirring up the war of religion,[1] and Bunsen is declared to have been right in saying, 'The Thirty Years' War was caused and perpetuated by the Jesuits'![2] Are we then to believe that France and Sweden and the Protestant princes in general were guiltless, and that the Jesuits inspired the all-powerful Richelieu and the princes leagued in defence of the pure Gospel; and this, although Richelieu was exasperated against the Jesuits, while the princes fled from them as from the plague? As a fact, the two works *Political Mysteries* and the *Warning to the most Christian King*, published in 1625 by the German Jesuit Keller, confessor to Duke Max of Bavaria, irritated the king[3] even more than Santerelli's pamphlet somewhat later; moreover, the Jesuit Theophil Raynaud of Sosprello, in the territory of Nice, refused to place his able pen at the disposal of Richelieu, and suffered many persecutions in consequence; indeed many members of the Society were in similar opposition to France.[4] Again, the edict of restitution, we are to believe, was 'due to the pressure of the Curia and of the Jesuits.' True, the emperor's confessor may alone have had influence in this matter; but the four Catholic electors had spoken in favour of the edict, as also the Papal nuncio.[5] It may indeed be doubted whether the edict was politically wise, but there is no doubt that it was legally justified. 'From the strictly legal point of view,' says K. A. Menzel,[6] 'it would be hard to find fault with the edict of restitution.' But Urban VIII., we are told, 'looked with no friendly eye upon the victory of

the emperor, for he considered the independence of the Papacy endangered by the ascendency of the House of Austria.' But even supposing Urban VIII. to have thought too exclusively of his position as a temporal prince,[7] what follows? Are Popes never expected to make mistakes in politics? And was the independence of the Holy See an object which any Pope could disregard? It is not correct that Urban VIII. refused all subsidies to the emperor. On July 19, 1631, the Pope declared himself ready to give him all aid, and granted him, on the exhaustion of his own treasury, six full tithes of all the churches of Italy.[8] Ferdinand desired not only large subsidies but also that the war should be declared to be one of religion (1632). Every one well read in history must concede that Urban VIII. was right in refusing this;[9] for it is shown by the whole course of the contest. All the Catholic generals in Germany denied that it was a war of religion, and even enrolled Protestant officers and soldiers under their banners;[10] how then could the Pope declare it to be such? However, after the death of Gustavus Adolphus[11] (November 6, 1632), Urban VIII. sent fresh supplies[12] to Germany, for he perceived that the weightiest Catholic interests were at stake; later he renewed in the emperor's favour the subsidy from Church property.[13] The letter of the Secretary of State to the nuncio at Vienna, Archbishop Cyriacus Rocci of Patras, July 9, 1633, declared the Pope to be in favour of a peace, but not on conditions such as to do lasting injury to the Catholic cause.[14] At the same time Urban VIII. endeavoured to induce Louis XIII. of France to assist the emperor and the Catholic princes of Germany against the Swedish generals, and to punish the lies of Ferdinand's adversaries, who openly boasted of the aid of France.[15] But we are again told that 'when in the year 1636 conferences were held at Cologne, having for their aim the pacification of Germany, they were brought to naught by Urban VIII.'[16] That is to say, that Urban sent thither his legate Ginetti, naturally with strict and binding instructions.[17] It cannot be doubted that the Pope was merely fulfilling his office in maintaining the rights of the Catholic Church; it was not his concern to obtain still further

powers for those 'who,' as K. A. Menzel says, 'looked upon it as their charge to give the last blow to the Papacy;'[18] he would, on the contrary, have laid himself open to severe and just censure had he blindly promoted or accepted any peace concluded in any degree at the cost of Catholics. And even supposing the 'Roman policy' to have been to blame for the overthrow of the Catholic cause in Germany, which has by no means been proved, it was still from the Church's point of view a matter of conscience to refuse consent to stipulations positively dangerous to the Church, which were never in the intention of the Pope, which not only injured the 'interests of Rome' and its sovereign but primarily and directly those of the Church in Germany; stipulations which encroached in so many ways on the domain of spiritual jurisdiction, and were the cause in the future of evils so serious that they may well be considered irreparable.

[1] Huber, p. 65.

[2] Karl Josias von Bunsen, German edition of Nippold, iii. p. 409.

[3] These works were condemned by the assembly of French clergy, Dec. 13, 1625 (Du Plessis, t. iii. P. ii. pp. 231-238); also by the Sorbonne (ib. t. ii. P. ii. pp. 190-198), and by the Paris parliament, Jan. 21, 1626 (ib. pp. 199, 200).

[4] Crétineau-Joly, Hist. de la Compagnie de Jésus, vol. iii. pp. 422 seq. 433 seq.

[5] Ranke's Popes, ii. pp. 517, 518, Germ. ed.

[6] Neuere Geschichte der Deutschen, vol. vii. p. 182.

[7] Ranke, l.c. ii. p. 537. Reumont, Geschichte der Stadt Rom. iii. ii. p. 613.

[8] Const. 160, Superna dispositione, xiv. Kal. Febr. 1631, Bullar. M. ed. Luxemb. 1742, t. v. pp. 237-240.

[9] Numerous proofs are given in J. Janssen's Schiller als Historiker, Freiburg, 1863, pp. 97 seq. 110 seq.; Onno Klopp, Kleindeutsche Geschichtsbaumeister, pp. 25, 52, 302. Boguslav Chemnitz, or Hippolitus a Lapide, as he called himself, wrote in 1640, de Ratione Status in Imperio nostro, P. iii. c. i.: 'Sileat ac cesset tandem vanus ille religionis praetextus; non enim credimus *de religione* jam amplius principaliter, *sed de regione* potius agi, ut aut liberi vivamus aut jugo domus Austriacae, hispanico sanguine mixtae, colla nostra turpiter subdamus.'

[10] Hurter, Zur Geschichte Wallensteins, p. 69. O. Klopp, Das Rest. Edict im nordwestl. Deutschland, Göttingen, 1860, p. 84.

[11] The report of the Venetian ambassadors that the death of the King of Sweden was displeasing to the Pope, and that he dreaded less the success of the Protestants than of the imperialists, cannot be taken as any proof of the Pope's true mind.

[12] Artaud, Hist. des Souv. Pontifes, t. v. p. 369.

[15] Bullar. Magn. l.c. Const. 178, pp. 255-258.
[16] Cf. Lämmer, l.c. p. 39, No. 23 c.
[17] Cod. Vatic. 6929. Cf. Lämmer, l.c. p. 39, No. 23, lit. d.
[18] Huber, p. 66.
[19] Ranke, l.c. ii. 568, 569.
[20] K. A. Menzel, iii. 287.

§ 19.

The dispute between Paul V. and the Republic of Venice in 1606 has been at all times turned to account by the enemies of the Holy See.[1] Together with various differences as to their mutual borders at Ferrara, the tithes of the clergy, and the exemptions of benefices, a further dispute arose from the imprisonment by the Republic of two ecclesiastics, Scipio Seraceni, canon of Vicenza, and Brandolino Valmarino of Forli, abbot of Narvesa, in direct breach of the privilege of ecclesiastical immunity established, as elsewhere, within the territory of the Republic; nor had any notice of the imprisonment been sent to the Holy See. The dispute was further occasioned by the maintenance by the Senate of two laws prejudicial to the Church, passed January 10, 1603, and March 26, 1605, by which laws the founding of new convents and hospitals, the building of churches, and the institution of new orders and confraternities were rendered difficult, the acquisition of property in land for the Church, as also the alienation of immovable property to her for more than two years without State approval, was forbidden.[2] These measures were to be the prelude to still further steps, to which the government was incessantly urged by the Protestant-minded Paul Sarpi.[3] As the Republic refused to make the slightest concession to the Pope's demands he at length excommunicated the Doge and the Senate, and laid Venice under an interdict.[4] The clergy were then forbidden by the Doge under pain of death to observe the sentence, and the greater number submitted to him; only the Jesuits, the Capuchins, the Theatines, and the Minims obeyed the Pope, and these were forced to leave the Venetian territory. The cause of the Holy See was defended in writing by Bellarmine, the doctrinal theologian, by Baronius, the Church historian, and by Prosper Fagnanus, the learned canonist;[5] while as champion for the

Venetian Republic stepped forth Paul Sarpi, who in this matter allowed free course to his bitter hatred against Rome.[6] It has been often asserted that he was for this cause in danger of falling 'a victim to an Ultramontane assassin.'[7] But the attempt in question was made on 5th October 1607, consequently when peace had been already restored with Rome: at that time a blow struck at Sarpi could only have been hurtful to the Papal interests instead of furthering them, for certain points of the peace desired by Rome were still under discussion. Moreover, the accounts in Siri, Thuanus, and in the relation of the Signoria to the ambassador in France do not in the least agree with the biography of Paul Sarpi, ascribed by many to P. Fulgenzio; the place, persons, and circumstances of the conspiracy are everywhere differently given. The sentence passed by the 'Council of Ten,' October 10, 1607, on Ridolfo Poma, M. Viti, and accomplices, gives no ground for charging the Roman See or its supporters with complicity; the evidence alleged will not bear the least investigation.[8] The Protestants took advantage of the dispute to promote their propaganda in Italy, distributing Geneva Bibles, and nourishing the opposition against the Holy See.[9] In the year following, however, absolution was given and the interdict removed upon the priests being released, the decree against the interdict retracted, and the rejected laws suspended.[10] Ranke observes: 'The points under dispute were not settled so entirely to the advantage of Venice as has been generally asserted.'[11] While the other banished religious orders were suffered to return, the Jesuits, so much dreaded by Sarpi's party, were only restored in 1657.[12]

[1] Huber, p. 56. Cf. Bluntschli, p. 68 seq.

[2] Cf. especially Muratori, Annali d' Italia, a. 1606, 1607; Novaès, Vitae Pontif. ix. pp. 92, 93; Artaud, Hist. des Souv. Pontifes, t. v. pp. 250-254; Natal. Alex. H. E. Cont. s. Supplem. t. ii. p. 9 seq.; Moroni, Dizionario, v. Paolo V. t. li. p. 135 seq.

[3] Bossuet, Hist. des Variations, l. vii. n. 108, p. 447. Brunet, Vie de Guill. Bedell (chaplain to the English Embassy in Venice), pp. 9, 19, 20. Le Bret, Magazin, ii. p. 236.

[4] Bullar. t. x. p. 175. Roscovány, Monum. iii. pp. 87-90, n. 440. Goldast. t. iii. p. 282.

[5] Fagnanus, de Justitia et Validitate Censurarum Pauli V. in rempublicam Venetam, Romae, 1607.

[6] Ranke's Popes, iii. 281. From Sarpi we have the Istoria particolare delle cose passate tra il Somno Pontefice Paolo V. e la serenissima Rep. di Venezia, Lione (Ginevra), 1624. Vide also Lämmer, Zur Kirchengeschichte, p. 49.

[7] Huber, pp. 56, 57. Hospinian, Lucius, and Stenius (De Facinore in M. Paulum Servitam perpetratro, Heidelb. 1608) said the same before him.

[8] Cf. Artaud, Hist. des Souverains Pontifes, t. v. Paris, 1847, p. 332, n. 2.

[9] Historisch Politische Blätter, 1852, vol. xxx. P. xii. p. 809 seq.

[10] Ranke's Popes, ii. Germ. ed. pp. 324 seq. 352. Paul. Jov. Vita Pauli V. § 28. Bussières, Hist. de France, l. xxiii. n. 19. Spondan. a. 1607, n. 2. Bianchi, t. ii. l. vi. § 11, n. 1 seq. p. 610 seq.

[11] Ranke's Popes, p. 354, Germ. ed.

[12] Crétineau-Joly, l.c. pp. 141, 151. Buss, Die Gesellschaft Jesu, pp. 973-976.

§ 20.

In the eighteenth century also 'monstrous pretensions' on the part of the Popes are alleged, and especially of Clement XI. 'When Philip V.,' says Huber, 'in order to join with Louis XIV. in a war against Austria, demanded subsidies in money from the Spanish clergy which they were quite willing to give, Clement XI. declared that the clergy might not accede to this demand without his permission.'[1] But in this the Pope was merely standing up for a right of the Church, set forth in Decretals which had been longer in force and had a higher sanction than the claims of the Bourbon dynasty; moreover, the Pope, who was a neutral in the war of the Spanish succession, could make no such concessions to Philip V., whose possession of the throne was not then certain, without grave violation of his neutrality; as it was, Austria had vehemently attacked the Pope on the charge of partiality, and neither claimant had as yet been recognised as rightful king.[2] The king had already employed in the war against the emperor and his allies the Church tithes formerly granted, the revenues of the *Crociata* originally destined for the struggle against the Turks;[3] how great would have been the scandal had the Father of Christendom, without regard to neutrality, given fresh grants of Church property for

a purely political end! Until later times, the court of Madrid, according to the law then in force, recognised that the approval of the Pope was necessary to any extraordinary taxation of the clergy, already sufficiently burdened; this may be seen in the Concordat of Sept. 26, 1737, art. 7 and 8,[4] and in the petition made and granted in 1740, for further contributions of Church property,[5] afterwards increased so as to be well-nigh intolerable.[6] It was in the reign of Charles III. (1759) that the Spanish government first claimed for itself alone the right of limiting and taxing Church property,[7] but it still for a long time continued to apply for Papal Indults for this.[8]

According to Huber,[9] the same Pope raised a tumult throughout Sicily for the sake of a few insignificant market dues, and endangered the salvation of the Sicilians for a basket of peas. Had Professor Huber read the monograph of Professor Sentis of Freiburg (the *Monarchia Sicula*),[10] were he acquainted with the discussions of the older canonists,[11] or even with the modern Piedmontese historians,[12] he would have known that though the occasion was trifling, a serious question of principle was involved, and that a crying abuse of the civil power was brought to light in this matter, of which Bauerband the jurist said: 'So ignominious a position of the Church towards the State, and one so completely incompatible with her constitution, could not long be tolerated.'[13] Our opponent must first refute the able monograph mentioned above before he can have any shadow of ground for his accusation.

[1] Huber, p. 69.
[2] Cf. the discussion in detail by the present author in the Archiv für Kath. Kirchenrecht, 1863, vol. x. p. 185 seq.
[3] Ibid. p. 188.
[4] Ibid. pp. 204-206.
[5] Moroni, Diz. v. Spagna, p. 148.
[6] Archiv, 1864, vol. xi. pp. 263, 380.
[7] Ibid. vol. xi. p. 368.
[8] Ibid. vol. xii. pp. 47, 52.
[9] Huber, p. 70.
[10] Die Monarchia Sicula. Eine historisch-canonistische Untersuchung von Dr. Fr. J. Sentis, Frieburg, 1869, especially p. 142 seq.
[11] Especially Pignatelli, Consultat. Can. t. vi. Cons. 22, n. 61 seq. p. 82 seq. Cf. t. ii. Cons. 34, n. 66 seq. p. 59 seq.

[12] Carutti, Storia del Regno di Vittorio Amadeo II. c. xix. p. 335 seq.

[13] Bonner, Theol. Literaturblatt, July 5, 1869, No. 14, p. 515 seq. (review of Sentis); amongst other observations are the following: 'The writing of Sentis affords "proof" that in the contest raised (as to the pretended Monarchia Sicula), and in the most difficult circumstances, the Pope steadily adhered to the purely ecclesiastical view; while the Spanish and Bourbon kings, though for the most part behaving personally as pious Catholics, still had no scruple under pretext of inalienable crown privileges in making arbitrary encroachments of all sorts upon what was without question the purely spiritual domain.'

§ 21.

No mention is made of other Popes, especially of Benedict XIV., who was yielding in the extreme towards civil rulers,[1] and made great concessions in his Concordats;[2] of Clement XIV., who went still further, and even sacrificed his most faithful supporters the Jesuits to the Bourbon courts.[3] But still when it suits the purpose of our enemies the 'incontestable fact' is maintained, 'that in a decree of Clement XIV., as authentic as was ever published ex cathedrâ by any Pope, the Jesuits, nearly a hundred years ago, were suppressed and banished as a society generally pernicious.'[4] Whoever speaks thus has not read or not understood the Brief (not Bull) 'Dominus ac Redemptor';[5] it is so far from being a judgment ex cathedrâ, that it does not contain one judicial sentence as to the general perniciousness of the Society, while Clement XIII., in a solemn Bull, had expressed the contrary.[6] Only in order to restore the peace disturbed by the Bourbon courts, and convinced that the Society (already in fact suppressed in Portugal, France, Spain, Naples, &c.) could no longer be as useful as in former days, was it suppressed by Clement XIV. in a simple order, with a reference made to the suppression of the Templars by Clement V.[7] and to other examples, but without the slightest reference to any one of the charges brought against it by the courts. The enemies as well as the friends of the Church acknowledge that by this measure a grievous wound was inflicted upon her.

[1] Ranke's Popes, iii. p. 180, Germ. ed. Cf. Schröckh, Kirchengeschichte seit der Reform. vi. p. 486.

[2] For the convention with Sardinia, vide Carutti, Storia del Regno di

Carlo Emanuele III. Torino, 1859, vol. i. p. 151 seq., with the documents in the appendix; on that with Spain, Archiv für Kath. Kirchenrecht, 1864, vol. xi. pp. 252, 253; on that with Portugal, Rigant, in Reg. ii. Canc. t. i. p. 227, n. a.; Schröckh, l.c. p. 437 seq.

[3] By reëstablishing the Jesuits, Pius VII. in the Bull Sollicitudo, Aug. 7, 1814, made amends for the injustice extorted from his predecessor. But even this expiation has been put down by Huber (p. 74) in the category of Papal misdeeds. Yet the governments concerned had already, to a great extent, seen that in expelling the Jesuits they had been themselves the victims of intrigues. The Duke of Parma, as early as 1793, took steps towards the reintroduction of the Society (Crétineau-Joly, Hist. v. pp. 493-495). The Elector of Bavaria, and other Catholic princes of Germany, treated of the same matter in 1794 (Writings of the Nuncio della Genga to Pius VI. d.d. Augsburg, Nov. 9, 1794, in Boero, Osservazioni sopra l' istoria del Pontificato di Clem. XIV. Monza, 1854, vol. ii. pp. 263, 264). The ministers who brought about the suppression of the Jesuits were overthrown, and some, as Pombal (ib. pp. 223-225), were subjected to the most serious charges; in 1804, Ferdinand IV. had reëstablished the Society in Naples; in 1815 the King of Spain did the same; in Prussia and Russia it had never been suppressed (Crétineau-Joly, l.c. pp. 509-511, 516; Boero, l.c. vol. i. p. 108; Theiner, Sammlung von Aktenstücken, pp. 23-27). But the injustice of the suppression is best shown by the documents published by Theiner (Histoire du Pontificat de Clément XIV.). Vide Historisch Polit. Blätter, 1854, vol. xxxiii. pp. 733-759; Clement XIV. Eine kritische Beleuchtung, Augsburg, 1854, p. 356.

[4] Michelis, in the Munich September meeting, 1871 (Report, p. 216); Windthorst of Berlin, in the Reichstag, May 15, 1872 (Report, p. 392).

[5] Bullar. Clem. XIV. pp. 607-618. Theiner, l.c. ii. pp. 358-379, t. iii. fin.

[6] Const. Apostolicum pascendi munus, Jan. 7, 1765, Bull. Rom. Contin. t. iii. ed. Romae, 1838, p. 38 seq.

[7] Text in the Tübingen Quartalschrift, 1866, i. pp. 56-84. Cf. Mansi, xxv. 389 seq.

§ 22.

The eighteenth century was a period of the deepest servitude and ignominy for the Catholic Church, and of indignities and insults to her Head, which reached their summit when Pius VI. was driven by force from Rome by the French Republic. The nineteenth century proved itself the heir of the eighteenth. An historian well versed in Bavarian affairs wrote in 1847: 'If freedom of conscience is to apply to Catholics, it is impossible that this freedom should consist in their ceasing to be Catholics; still less can it mean that they are to be Catholics in heart alone, while in their public profession, in education, in society, and in

the State they are hampered, in spite of the assurances of government, by its usurpation of ecclesiastical power. Neither can it consist in a kindly acknowledgment of the power of the Church by the secular ruler and government in purely spiritual matters alone, which in fact can be no more controlled than thought, thus leaving her at best the invisible world as her field for action. But in truth liberty of conscience, which Protestants may understand to mean simply the legal interpretation of the phrase, consists for a Catholic in the enjoyment by the Church, and by himself within her, of that liberty of development which is her due from her divine foundation and from the canonical decrees, that is to say, that freedom which we (Bavarians) have one and all sworn to maintain to her.'[1] The old contest is not yet come to an end, but is ever reappearing under new conditions. The Church will content herself with what is indispensably and absolutely necessary; but her freedom is to her above all earthly goods; for it she will ever strive and do battle, and in this cause she will see gather round her Catholic nations in whom the spirit of freedom is still living and strong, who are not deceived by hollow phrases, who strive after the thing and not the name. 'The Church of God,' wrote St. Bernard[2] on one occasion to the German King Conrad III., 'has from the beginning been often oppressed and often set free. The arm of the Lord is not shortened, nor become powerless to save her. He will, without doubt, once again set free His Bride, whom He has redeemed with His blood, endowed with His Spirit, adorned with heavenly gifts, and moreover enriched with earthly gifts. He will set her free, I repeat He will set her free; but if it is done by means of another hand, let the princes of the empire consider that this will be neither to the honour of the king nor to the benefit of the empire.'

[1] 'By § 1 of the last appendix but one of the constitution.' Concordat und Constitutionseid der Katholiken in Bayern, p. viii. seq.

[2] Bern. Ep. 244, c. ii. p. 441 seq.

§ 23.

The Catholic Church may perish, not indeed throughout the

whole earth but in individual lands, as happened in North Africa and in the East; the Kingdom of God may be taken from certain nations and bestowed upon others more worthy of it; but the Catholics of Germany have not as yet proved themselves an unworthy people; they are not yet enervated as were those nations; they may still hope for a better future. They feel and acknowledge that they are living in times of trial, that a gigantic war has been kindled against them, in which individuals may perish, suffer loss of earthly goods, and endure many sorts of martyrdom, but in which the Church, built upon the divine promise, can never be overcome. They do not conceal from themselves that, humanly speaking, they might almost envy the Roumanian Jews, upon whom so much tender care is bestowed by the great of this world and by diplomatists; but they know also that their firm trust is in a Divine Providence which will turn to good the very attempts of their enemies. What is now going on will not fail to have an influence and produce an impression upon our contemporaries, in whom faith is weak, and upon the noble-minded among non-Catholics. Many will admire the concord, the joyful self-devotion, and the constancy of their Catholic brethren, and when times are hardest they will see them uniting fidelity to God with fidelity to the king in the old Christian sense, maintaining openly and courageously the eternal and unchanging principles of justice and the holiest interests of mankind, but never bending the knee before the great Bel or Baal of the heathen. Such conduct will do more for the future union of Christendom than all the efforts for union based on Febronian and Jansenistic principles.

§ 24.

In that land in which the Catholic Church ceases to exist, the Christian State in these days ceases to exist also. If the Church is uprooted, all Christianity falls with her; for in her alone Christianity remains firm and undivided, a divine institution standing forth real and visible before the world. But let not those who destroy the Christian State think that with it they will destroy the Catholic Church. She will outlive their

efforts, their sophistries, and their falsehoods; and as once, when the civilisation of the ancient world was swept away by the barbarians, she gave a new life to Europe, so again, when Liberalism and Socialism, the unwelcome and disowned but most true son and heir of Liberalism, have done their evil work, she will awaken once more to life the Christian State, and bring back society from the Paganism to which it has sunk to the religion of the Cross. Then no longer will it be thought the highest wisdom to look on the State as a mere work of man resting on physical force alone, and to shut out religion as an hostile influence, till it be needed in some political extremity. Then at last the Catholic Church, so long despised, gainsaid, calumniated, while she has no cause to blush for the past, will be triumphantly justified in the present, and in the future a glorious field will be thrown open to her, when in her and through her the world is once more subdued by her Head and Defender as King of kings and Lord of lords. The Christian State, like other States, has only an earthly existence, and has no divine promise and pledge of endurance. But the Catholic Church, the work of God Incarnate, has a supernatural life, the fulness of the promises, and the most secure pledge of endurance even till the end of the world, when the state of struggle and pilgrimage shall be changed into the state of glory and triumph. And all that she knows and believes and hopes she can sum up in the words of her Spouse, who has said: 'Heaven and earth shall pass away, but My words shall not pass away.'

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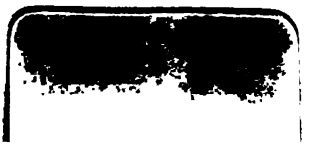
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